

EXHIBIT 13

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re: :
: Chapter 11
: Case No.
HIGHLAND CAPITAL MANAGEMENT, : 19-34054-sgj11
L.P. :
Debtor. :

:
HIGHLAND CAPITAL MANAGEMENT, :
L.P. :
:
Plaintiff, :
:
vs. : Adversary
: Proceeding No.
NEXPOINT ADVISORS, L.P., : 21-03005-sgj
JAMES DONDERO, NANCY DONDERO, :
AND THE DUGABOY INVESTMENT :
TRUST, :
:
Defendants. :

REMOTE VIDEO DEPOSITION OF JAMES DONDERO

VOLUME III

Thursday, November 4, 2021

JOB NO. 202288

<p>Page 2</p> <p>1</p> <p>2</p> <p>3</p> <p>4 November 4, 2021</p> <p>5 1:17 p.m. CDT</p> <p>6</p> <p>7</p> <p>8 Remote video deposition of JAMES</p> <p>9 DONDERO taken in the above-entitled matter</p> <p>10 before Suzanne J. Stotz, a Certified Shorthand</p> <p>11 Reporter, Certified Realtime Reporter,</p> <p>12 Registered Professional Reporter, and Notary</p> <p>13 Public of the State of Texas, on Thursday,</p> <p>14 November 4, 2021, commencing at 1:17 p.m. CDT.</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>Page 3</p> <p>1 A P P E A R A N C E S:</p> <p>2</p> <p>3 Attorneys for Highland Capital Management L.P.:</p> <p>4 (Via videoconference)</p> <p>5 PACHULSKI STANG ZIEHL & JONES</p> <p>6 780 Third Avenue</p> <p>7 New York, New York 10017</p> <p>8 BY: JOHN MORRIS, ESQ.</p> <p>9 HAYLEY WINOGRAD, ESQ.</p> <p>10</p> <p>11 Attorneys for NexPoint Advisors, L.P.:</p> <p>12 (Via videoconference)</p> <p>13 MUNSCH HARDT KOPF & HARR</p> <p>14 500 North Akard Street</p> <p>15 Dallas, Texas 75201</p> <p>16 BY: THOMAS BERGHMAN, ESQ.</p> <p>17</p> <p>18 Attorneys for James Dondero, Nancy Dondero,</p> <p>19 HCRE HCMS:</p> <p>20 (Via videoconference)</p> <p>21 STINSON</p> <p>22 3102 Oak Lawn Avenue</p> <p>23 Dallas, Texas 75219</p> <p>24 BY: DEBORAH DEITSCH-PEREZ, ESQ</p> <p>25 BY: MICHAEL AIGEN, ESQ.</p>
<p>Page 4</p> <p>1 A P P E A R A N C E S (Continued):</p> <p>2</p> <p>3 Attorneys for Nancy Dondero:</p> <p>4 (Via videoconference)</p> <p>5 GREENBERG TRAURIG</p> <p>6 220 Ross Avenue</p> <p>7 Dallas, Texas 75201</p> <p>8</p> <p>9 BY: DANIEL ELMS, ESQ.</p> <p>10</p> <p>11 Attorneys for The Dugaboy Investment Trust:</p> <p>12 (Via videoconference)</p> <p>13 HELLER, DRAPER, HAYDEN, PATRICK & HORN</p> <p>14 650 Poydras Street</p> <p>15 New Orleans, Louisiana 70130</p> <p>16</p> <p>17 BY: DOUGLAS DRAPER, ESQ.</p> <p>18 MICHAEL LANDIS, ESQ.</p> <p>19</p> <p>20 Attorneys for The Litigation Trust:</p> <p>21 (Via videoconference)</p> <p>22 QUINN EMANUEL URQUHART & SULLIVAN</p> <p>23 51 Madison Avenue</p> <p>24 New York, New York 10010</p> <p>25</p> <p>BY: ROBERT LOIGMAN, ESQ.</p> <p>DEBORAH NEWMAN, ESQ.</p>	<p>Page 5</p> <p>1 A P P E A R A N C E S (Continued):</p> <p>2</p> <p>3 A L S O P R E S E N T:</p> <p>4 (Via Videoconference)</p> <p>5 JACOB ARVOLD, Videographer</p> <p>6</p> <p>7 (Via Videoconference)</p> <p>8 LA ASIA CANTY, Legal Assistant</p> <p>9 c/o Pachulski Stang Ziehl & Jones</p> <p>10</p> <p>11 (Via Videoconference)</p> <p>12 AARON LAWRENCE, Law Clerk</p> <p>13 c/o Quinn Emanuel Urquhart & Sullivan</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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<p>1 JAMES DONDERO</p> <p>2 THE VIDEOGRAPHER: Good afternoon.</p> <p>3 My name is Jacob Arvold. I'm a certified</p> <p>4 legal videographer in association with</p> <p>5 TSG Reporting, Inc.</p> <p>6 Due to the severity of COVID-19 and</p> <p>7 following the practice of social</p> <p>8 distancing, I will not be in the same room</p> <p>9 with the witness; instead, I will record</p> <p>10 this video deposition remotely.</p> <p>11 The reporter, Suzanne Stotz, also</p> <p>12 will not be in the same room and will swear</p> <p>13 the witness remotely.</p> <p>14 Do all parties stipulate to the</p> <p>15 validity of video recording and remote</p> <p>16 swearing and that it will be admissible in</p> <p>17 the courtroom as if it had been taken</p> <p>18 following Rule 30 of the Federal Rules of</p> <p>19 Civil Procedures and the state's rules</p> <p>20 where this case is pending?</p> <p>21 MR. MORRIS: Yes.</p> <p>22 If anybody objects to that, please</p> <p>23 speak up.</p> <p>24 Nobody has spoken up. So everybody</p> <p>25 is deemed to have accepted that.</p>	<p>1 JAMES DONDERO</p> <p>2 THE VIDEOGRAPHER: Thank you.</p> <p>3 This is the start of Media Number 1,</p> <p>4 Volume II [sic] of the video-recorded</p> <p>5 deposition of James Dondero in the matter</p> <p>6 of In Re: Highland Capital Management,</p> <p>7 L.P., in the United States Bankruptcy Court</p> <p>8 for the Northern District of Texas.</p> <p>9 This deposition is being held</p> <p>10 remotely on November 4, 2021, at</p> <p>11 approximately 1:17 p.m.</p> <p>12 Counsel, please introduce</p> <p>13 yourselves.</p> <p>14 MR. MORRIS: Everybody is – is on</p> <p>15 here. I don't – we can't take the time to</p> <p>16 do that. I'm familiar with everybody on</p> <p>17 here. Everybody's appeared in this action</p> <p>18 before, and I'd like to proceed.</p> <p>19 THE VIDEOGRAPHER: All right. The</p> <p>20 appearances will be on the stenographic</p> <p>21 record.</p> <p>22 Will the court reporter please</p> <p>23 reswear the witness.</p> <p>24 THE COURT REPORTER: Could you raise</p> <p>25 your hand.</p>

<p>Page 10</p> <p>1 JAMES DONDERO</p> <p>2 THE WITNESS: (Complies with</p> <p>3 request.)</p> <p>4 JAMES DONDERO,</p> <p>5 having first been duly sworn, was examined and</p> <p>6 testified as follows:</p> <p>7 MS. DEITSCH-PEREZ: I only have one</p> <p>8 questions. Who's Robert Loigman?</p> <p>9 MR. LOIGMAN: I already stated for</p> <p>10 the record. I'm with Quinn Emanuel. I'm</p> <p>11 Debbie Newman's partner.</p> <p>12 MS. DEITSCH-PEREZ: Okay. Thank</p> <p>13 you.</p> <p>14 MR. MORRIS: Can we please put up on</p> <p>15 the screen the document that's been marked</p> <p>16 Exhibit 31.</p> <p>17 MS. CANTY: (Complies with request.)</p> <p>18 EXAMINATION</p> <p>19 BY MR. MORRIS:</p> <p>20 Q. Mr. Dondero, do you understand that</p> <p>21 this is a continuation of your deposition from</p> <p>22 Friday?</p> <p>23 A. Yes.</p> <p>24 Q. Have you spoken with anybody about</p> <p>25 your testimony since we concluded the</p>	<p>Page 11</p> <p>1 JAMES DONDERO</p> <p>2 deposition on Friday?</p> <p>3 A. No.</p> <p>4 Q. Nobody in the world?</p> <p>5 A. Just my attorney.</p> <p>6 Q. And did you speak with your attorney</p> <p>7 about the substance of the deposition on</p> <p>8 Friday? Just –</p> <p>9 MS. DEITSCH-PEREZ: I'm going to</p> <p>10 direct – I'm going to direct him not to</p> <p>11 answer.</p> <p>12 BY MR. MORRIS:</p> <p>13 Q. Okay. I'm just asking you a</p> <p>14 yes-or-no question. I'm not asking for the</p> <p>15 substance of any communications.</p> <p>16 MS. DEITSCH-PEREZ: Well, you're –</p> <p>17 one, I'd have to talk to him to see what he</p> <p>18 thinks "substance" means.</p> <p>19 And to the extent that's</p> <p>20 substantive, you're actually getting at the</p> <p>21 content potentially of a discussion. So</p> <p>22 I'm going to direct him not to answer.</p> <p>23 BY MR. MORRIS:</p> <p>24 Q. Are you going to follow your</p> <p>25 counsel's advice?</p>
<p>Page 12</p> <p>1 JAMES DONDERO</p> <p>2 A. Yes.</p> <p>3 Q. How much time did you spend speaking</p> <p>4 with your attorney since the conclusion of the</p> <p>5 last deposition?</p> <p>6 A. 30 minutes, 40 minutes.</p> <p>7 Q. Are you aware that Alan Johnson</p> <p>8 testified in this case the other day?</p> <p>9 A. I don't know who Alan Johnson is.</p> <p>10 Uh, no.</p> <p>11 Q. Okay. Is it fair to say that you</p> <p>12 have no knowledge of Mr. Johnson's testimony?</p> <p>13 A. I have no knowledge of Mr. Johnson's</p> <p>14 testimony.</p> <p>15 Q. Are you aware that an expert was</p> <p>16 examined by me earlier in the week in</p> <p>17 connection with this case?</p> <p>18 A. I'm aware there's an expert. I'm</p> <p>19 not – I'm not aware that you've examined,</p> <p>20 deposed, or whatever you did with him.</p> <p>21 Q. Okay. When did you speak with your</p> <p>22 counsel for 30 minutes about – following last</p> <p>23 Friday's examination?</p> <p>24 A. About 40 minutes ago.</p> <p>25 Q. Okay.</p>	<p>Page 13</p> <p>1 JAMES DONDERO</p> <p>2 MR. MORRIS: Can we go to</p> <p>3 paragraph 82 of this document –</p> <p>4 Q. – Mr. Dondero, do you see that this</p> <p>5 is your answer to the Plaintiff's Amended</p> <p>6 Complaint.</p> <p>7 A. Yes.</p> <p>8 Q. And we looked at this the other day;</p> <p>9 do you remember that?</p> <p>10 A. Yes.</p> <p>11 MR. MORRIS: Can we can go to page–</p> <p>12 paragraph 82, please.</p> <p>13 MS. CANTY: (Complies with request.)</p> <p>14 BY MR. MORRIS:</p> <p>15 Q. And I just want to table set to make</p> <p>16 sure we're on the same page.</p> <p>17 Paragraph 82 describes the</p> <p>18 agreements that you entered into with Dugaboy</p> <p>19 consuming the forgiveness of certain Promissory</p> <p>20 Notes subject to conditions subsequent.</p> <p>21 Is that a fair overarching overview</p> <p>22 of the nature of the agreements?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. And for the rest of the</p> <p>25 deposition today, when I use the phrase</p>

<p>Page 14</p> <p>1 JAMES DONDERO</p> <p>2 "agreements," I'm going to mean the agreements</p> <p>3 that are referred to in paragraph 82; is that</p> <p>4 fair?</p> <p>5 A. Yes, generally. If I have any</p> <p>6 questions, I'll – I'll ask.</p> <p>7 Q. Thank you very much.</p> <p>8 The agreements covered each of the</p> <p>9 notes that are the subject of the lawsuits that</p> <p>10 Highland commenced against you, HCRE Services,</p> <p>11 and NexPoint; is that right?</p> <p>12 A. The – yes.</p> <p>13 Q. What are you looking at?</p> <p>14 A. Just this note sheet that covers all</p> <p>15 the notes.</p> <p>16 Q. Oh.</p> <p>17 MR. MORRIS: Deborah, I would demand</p> <p>18 that that sheet be produced immediately.</p> <p>19 MS. DEITSCH-PEREZ: Okay.</p> <p>20 MR. MORRIS: Okay. And I would ask</p> <p>21 him to put it away.</p> <p>22 MS. DEITSCH-PEREZ: No. He's a</p> <p>23 30(b)(6) witness. He's entitled to have a</p> <p>24 list of the notes. He sure he is.</p> <p>25 MR. MORRIS: I'm telling you now –</p>	<p>Page 15</p> <p>1 JAMES DONDERO</p> <p>2 MS. DEITSCH-PEREZ: I'm sorry to say</p> <p>3 to you.</p> <p>4 MR. MORRIS: I object. That is – I</p> <p>5 have never in my life seen a witness –</p> <p>6 MS. DEITSCH-PEREZ: I have had</p> <p>7 30(b)(6) witnesses with whole notebooks of</p> <p>8 information.</p> <p>9 MR. MORRIS: Okay. So let's just</p> <p>10 make sure the record is clear.</p> <p>11 BY MR. MORRIS:</p> <p>12 Q. Please describe for me what's on</p> <p>13 that page.</p> <p>14 A. It's a listing of the Notes payable</p> <p>15 to Highland, what their original term and</p> <p>16 amount was, what the term is, and what the loan</p> <p>17 date was.</p> <p>18 Q. Okay. I'm going to ask the –</p> <p>19 MS. DEITSCH-PEREZ: No. I'm going</p> <p>20 to take a picture, and I'm going to send it</p> <p>21 to you, okay?</p> <p>22 MR. MORRIS: Okay. And what we're</p> <p>23 going to do right now is ask him to put it</p> <p>24 away, and I'm going to ask him questions</p> <p>25 solely in his capacity as an individual,</p>
<p>Page 16</p> <p>1 JAMES DONDERO</p> <p>2 okay?</p> <p>3 Please put it away.</p> <p>4 THE WITNESS: Isn't that what this</p> <p>5 deposition is, right? This deposition –</p> <p>6 MS. DEITSCH-PEREZ: Well, this</p> <p>7 deposition is both.</p> <p>8 We're going to take a break for a</p> <p>9 second. Let me think about that, but</p> <p>10 I'll –</p> <p>11 MR. MORRIS: I object. I really</p> <p>12 object. I really object. I'm glad that</p> <p>13 this is all on the record. I object.</p> <p>14 My request is that he put it away</p> <p>15 and answer questions in his capacity as an</p> <p>16 individual.</p> <p>17 I don't know why we need to take a</p> <p>18 break.</p> <p>19 MS. DEITSCH-PEREZ: Well, because</p> <p>20 I'm going to go take a picture of it and</p> <p>21 send it to you.</p> <p>22 MR. MORRIS: I don't want you to do</p> <p>23 that, though.</p> <p>24 MS. DEITSCH-PEREZ: Why don't you</p> <p>25 want – okay.</p>	<p>Page 17</p> <p>1 JAMES DONDERO</p> <p>2 MR. MORRIS: We can do that – we</p> <p>3 can do that when I ask him questions as a</p> <p>4 30(b)(6) witness.</p> <p>5 By the way, it's still</p> <p>6 inappropriate, but –</p> <p>7 MS. DEITSCH-PEREZ: No, it's not</p> <p>8 John.</p> <p>9 MR. MORRIS: Okay.</p> <p>10 MS. DEITSCH-PEREZ: It's just not.</p> <p>11 You can say it as much as you want. It</p> <p>12 doesn't make it inappropriate.</p> <p>13 And I am going to – I want to think</p> <p>14 for a minute about whether or not your</p> <p>15 request to have him not have it in front of</p> <p>16 him in his individual capacity is</p> <p>17 appropriate. And I'm not going to make a</p> <p>18 snap decision. I'm going to talk to my</p> <p>19 colleagues, and we'll be back on the record</p> <p>20 in a couple of minutes.</p> <p>21 MR. MORRIS: I object, but I can't</p> <p>22 stop you.</p> <p>23 MS. DEITSCH-PEREZ: Okay.</p> <p>24 THE VIDEOGRAPHER: Would you like to</p> <p>25 go off the video record, Counsel?</p>

<p style="text-align: right;">Page 18</p> <p>1 JAMES DONDERO</p> <p>2 MR. MORRIS: No, no, not at all.</p> <p>3 THE VIDEOGRAPHER: Okay.</p> <p>4 MR. MORRIS: And just keep the --</p> <p>5 keep the record going.</p> <p>6 THE VIDEOGRAPHER: Yep, will do.</p> <p>7 MR. MORRIS: And we're not off the</p> <p>8 record?</p> <p>9 THE VIDEOGRAPHER: Correct.</p> <p>10 THE COURT REPORTER: Correct.</p> <p>11 MS. DEITSCH-PEREZ: Okay. We're</p> <p>12 back on the record.</p> <p>13 THE VIDEOGRAPHER: We remained on</p> <p>14 the record.</p> <p>15 MS. DEITSCH-PEREZ: Okay. And this</p> <p>16 part -- this -- at this point Mr. Morris</p> <p>17 only taking Mr. Dondero's deposition in his</p> <p>18 personal capacity, not as a 30(b)(6)</p> <p>19 witness.</p> <p>20 If you want to resume taking his</p> <p>21 deposition as a 30(b)(6) witness, let me</p> <p>22 know; and I will tell him to get his list</p> <p>23 of notes.</p> <p>24 MR. MORRIS: So he doesn't have it</p> <p>25 in front of him right now?</p>	<p style="text-align: right;">Page 19</p> <p>1 JAMES DONDERO</p> <p>2 THE WITNESS: Correct.</p> <p>3 MS. DEITSCH-PEREZ: Correct, he does</p> <p>4 not.</p> <p>5 MR. MORRIS: Okay. I'm going to</p> <p>6 proceed; and I would ask, Deborah, that</p> <p>7 somebody from your office send that to me</p> <p>8 as soon as possible. I'm sure it's on an</p> <p>9 e-mail somewhere and all they have to do is</p> <p>10 hit send.</p> <p>11 BY MR. MORRIS:</p> <p>12 Q. Mr. Dondero, let's continue.</p> <p>13 So you don't have that document in</p> <p>14 front of you right now?</p> <p>15 A. Correct.</p> <p>16 Q. Okay. How many agreements did you</p> <p>17 enter into with Dugaboy?</p> <p>18 MS. DEITSCH-PEREZ: You mean with</p> <p>19 the Dugaboy trustee?</p> <p>20 We had an agreement that you were</p> <p>21 going to refer to these as the agreements</p> <p>22 with the Dugaboy trustee. So let's stay</p> <p>23 consistent.</p> <p>24 BY MR. MORRIS:</p> <p>25 Q. Mr. Dondero, how many agreements did</p>
<p style="text-align: right;">Page 20</p> <p>1 JAMES DONDERO</p> <p>2 you enter into with Dugaboy trustee concerning</p> <p>3 Promissory Notes?</p> <p>4 A. Is your question -- is your</p> <p>5 questions how many Notes were entered into?</p> <p>6 Q. No. How many separate agreements</p> <p>7 did you enter into?</p> <p>8 A. The 2017, '18, and '19 agreements.</p> <p>9 Q. Okay. I didn't ask you what</p> <p>10 agreements. I asked how many agreements you</p> <p>11 entered into with the Dugaboy trustee.</p> <p>12 MS. DEITSCH-PEREZ: Asked and</p> <p>13 answered.</p> <p>14 THE WITNESS: Three major ones.</p> <p>15 BY MR. MORRIS:</p> <p>16 Q. Are there any minor ones?</p> <p>17 A. Not that I can recall right now.</p> <p>18 Q. Okay. When did you enter into your</p> <p>19 first major agreement with the Dugaboy trustee?</p> <p>20 A. At the end of '17.</p> <p>21 Q. Meaning December 2017 or early 2018?</p> <p>22 A. Yes.</p> <p>23 Q. What Promissory Notes are the</p> <p>24 subject of the first major agreement that you</p> <p>25 entered into with the Dugaboy trust- -- with</p>	<p style="text-align: right;">Page 21</p> <p>1 JAMES DONDERO</p> <p>2 the Dugaboy trustee?</p> <p>3 A. I don't remember which ones</p> <p>4 specifically. I remember the amount was more</p> <p>5 substantial than subsequent years.</p> <p>6 Q. Do you know how many Promissory</p> <p>7 Notes were the subject of your first major</p> <p>8 agreement with the Dugaboy trustee?</p> <p>9 A. No.</p> <p>10 Q. Can you identify the maker of any</p> <p>11 Note that's subject to the first major</p> <p>12 agreement with the Dugaboy trustee?</p> <p>13 A. Not without my list or details.</p> <p>14 Q. Can you identify the principal</p> <p>15 amount of any Promissory Note that was subject</p> <p>16 to the first agreement that you entered into</p> <p>17 with the Dugaboy trustee?</p> <p>18 A. I know they were -- I know the gross</p> <p>19 amount. I know they were some of the term</p> <p>20 loans, but I don't know the specifics.</p> <p>21 Q. Can you tell me the aggregate</p> <p>22 amount -- withdrawn.</p> <p>23 Can you tell me the aggregate</p> <p>24 principal amount of the Notes that are the</p> <p>25 subject of your first agreement with the</p>

<p>Page 22</p> <p>1 JAMES DONDERO</p> <p>2 Dugaboy trustee?</p> <p>3 A. I – I believe it was 30 – 30 some</p> <p>4 odd million, 30 – I can't remember the</p> <p>5 principal and interest, but it's only 30 – 34,</p> <p>6 35, 36. It was in that range.</p> <p>7 Q. Did your first agreement with the –</p> <p>8 withdrawn.</p> <p>9 Can you identify the date of any of</p> <p>10 the Promissory Notes that are the subject of</p> <p>11 your first agreement with the Dugaboy trustee?</p> <p>12 A. No.</p> <p>13 Q. Can you tell me the year that any of</p> <p>14 the Promissory Notes that are the subject of</p> <p>15 the – withdrawn.</p> <p>16 Can you tell me the year that any of</p> <p>17 the Promissory Notes were entered into that are</p> <p>18 the subject of your first agreement with the</p> <p>19 Dugaboy trustee?</p> <p>20 MS. DEITSCH-PEREZ: Asked and</p> <p>21 answered.</p> <p>22 THE WITNESS: No, not off the top of</p> <p>23 my head.</p> <p>24 BY MR. MORRIS:</p> <p>25 Q. When did you – did – when did you</p>	<p>Page 23</p> <p>1 JAMES DONDERO</p> <p>2 enter into the second agreement with the</p> <p>3 Dugaboy trustee?</p> <p>4 Was that in December of 2018 or</p> <p>5 early 2019?</p> <p>6 A. Yes.</p> <p>7 Q. How many Notes are subject to your</p> <p>8 second agreement with the Dugaboy trustee?</p> <p>9 A. Less than the first, but I don't</p> <p>10 know how many.</p> <p>11 Q. You don't know the number of Notes</p> <p>12 that are the subject of your second agreement</p> <p>13 with the Dugaboy trustee; is that right?</p> <p>14 A. Correct.</p> <p>15 Q. Can you identify the maker of any</p> <p>16 Notes that are the subject of your second</p> <p>17 agreement with the Dugaboy trustee?</p> <p>18 A. No, I – I – no, I don't remember.</p> <p>19 Q. Okay. So as you sit here right now,</p> <p>20 you can't identify the maker of any of the</p> <p>21 Notes that are the subject of the second</p> <p>22 agreement with the Dugaboy trustee; is that</p> <p>23 right?</p> <p>24 A. Well, it would be one of the three</p> <p>25 parties or four parties here, me or NexPoint or</p>
<p>Page 24</p> <p>1 JAMES DONDERO</p> <p>2 whatever; but I don't remember –</p> <p>3 Q. Okay.</p> <p>4 A. – off the top of my head.</p> <p>5 Q. Off the top of your head, can you</p> <p>6 tell me the original principal amount of any</p> <p>7 Note that's subject to your second agreement</p> <p>8 with the Dugaboy trustee?</p> <p>9 A. No. I just – no.</p> <p>10 Q. Can you identify the date on which</p> <p>11 any of the Promissory Notes were executed that</p> <p>12 were the subject of your second agreement with</p> <p>13 the Dugaboy trustee?</p> <p>14 A. No.</p> <p>15 Q. Can you tell me the aggregate</p> <p>16 principal amount of the Notes that are the</p> <p>17 subject of your second agreement with the</p> <p>18 Dugaboy trustee?</p> <p>19 A. Yes. A fraction of the prior year.</p> <p>20 Less than ten million.</p> <p>21 Q. Can you be anymore precise than</p> <p>22 that?</p> <p>23 A. Approximately ten million, I think.</p> <p>24 Just under.</p> <p>25 Q. Okay. Did you enter into your third</p>	<p>Page 25</p> <p>1 JAMES DONDERO</p> <p>2 agreement with the Dugaboy trustee in December</p> <p>3 2019 or early 2020?</p> <p>4 A. Yes.</p> <p>5 Q. That's after the petition date; do I</p> <p>6 have that right?</p> <p>7 A. I – yes.</p> <p>8 Q. Did you do it before or after</p> <p>9 January 9, 2020?</p> <p>10 A. Before, I believe.</p> <p>11 Q. So while you were still in control</p> <p>12 of Highland but after the petition date, you</p> <p>13 entered into your third agreement with the</p> <p>14 Dugaboy trustee concerning Promissory Notes.</p> <p>15 Do I have that right?</p> <p>16 A. Yes.</p> <p>17 Q. Did you ever inform the bankruptcy</p> <p>18 court of this agreement?</p> <p>19 A. No.</p> <p>20 Q. Did you ever inform the independent</p> <p>21 directors of this agreement that you entered</p> <p>22 into after the petition date?</p> <p>23 A. No.</p> <p>24 Q. Can you tell me which notes are the</p> <p>25 subject of your third agreement with the</p>

<p>Page 26</p> <p>1 JAMES DONDERO</p> <p>2 Dugaboy trustee?</p> <p>3 A. No.</p> <p>4 Q. Can you identify the maker on any</p> <p>5 Note that's the subject of your agreement that</p> <p>6 you entered into after the petition date with</p> <p>7 the Dugaboy trustee?</p> <p>8 A. Not off the top of my head.</p> <p>9 MS. DEITSCH-PEREZ: I mean, John, if</p> <p>10 you would let him look at his list, he</p> <p>11 could tell you.</p> <p>12 But if you insist on making this a</p> <p>13 memory test of 18 or so different things or</p> <p>14 however many there are, 13, 14, then this</p> <p>15 is – it's your deposition. But if you</p> <p>16 want more specific details, he could look</p> <p>17 at the list.</p> <p>18 MR. MORRIS: Okay. That's not even</p> <p>19 an objection let alone a speaking</p> <p>20 objection.</p> <p>21 It is my deposition –</p> <p>22 MS. DEITSCH-PEREZ: No.</p> <p>23 MR. MORRIS: It is my deposition,</p> <p>24 and I would appreciate your not making</p> <p>25 gratuitous comments.</p>	<p>Page 27</p> <p>1 JAMES DONDERO</p> <p>2 BY MR. MORRIS:</p> <p>3 Q. Mr. Dondero, can you tell me the</p> <p>4 aggregate value of the Notes that are the</p> <p>5 subject of the third agreement that you entered</p> <p>6 into with the Dugaboy trustee after the</p> <p>7 petition date?</p> <p>8 A. I believe it was about a million</p> <p>9 bucks.</p> <p>10 Q. And who were the makers of the Notes</p> <p>11 that are the subject of the agreement with the</p> <p>12 Dugaboy trustee that you entered into after the</p> <p>13 petition date?</p> <p>14 A. I don't know.</p> <p>15 Q. Without the sheet that you looked at</p> <p>16 earlier, you have no ability to tell me which</p> <p>17 notes were the subject of which agreement that</p> <p>18 you entered into with the Dugaboy trustee,</p> <p>19 correct?</p> <p>20 MS. DEITSCH-PEREZ: Object to the</p> <p>21 form.</p> <p>22 THE WITNESS: If I'm not certain off</p> <p>23 the top of my head I can remember</p> <p>24 accurately, I don't want to speculate.</p> <p>25</p>
<p>Page 28</p> <p>1 JAMES DONDERO</p> <p>2 BY MR. MORRIS:</p> <p>3 Q. All right. I don't want you to</p> <p>4 speculate either. So I'm going to ask you just</p> <p>5 broad follow-up questions.</p> <p>6 Can you identify any Promissory Note</p> <p>7 that is the subject of any specific agreement</p> <p>8 that you ever entered into with the Dugaboy</p> <p>9 trustee without looking at the list?</p> <p>10 MS. DEITSCH-PEREZ: Object to the</p> <p>11 form. He's already done that to some</p> <p>12 degree.</p> <p>13 THE WITNESS: I believe it covered</p> <p>14 virtually all of them. So I don't remember</p> <p>15 which ones specifically in each year.</p> <p>16 Generally, it was, I believe, the</p> <p>17 ones incurred in that year; but I don't</p> <p>18 remember which entities. But again, the</p> <p>19 ultimate result being that the term loans,</p> <p>20 the demand notes, the things incurred, the</p> <p>21 things outstanding were part of the</p> <p>22 agreement.</p> <p>23 BY MR. MORRIS:</p> <p>24 Q. Sir, you never wrote down a list of</p> <p>25 the notes that are the subject of the</p>	<p>Page 29</p> <p>1 JAMES DONDERO</p> <p>2 agreements, correct?</p> <p>3 A. Correct.</p> <p>4 Q. You never asked anybody to make a</p> <p>5 list of the notes that were the subject of each</p> <p>6 of the agreements, correct?</p> <p>7 A. Correct.</p> <p>8 Q. You're not aware of any document</p> <p>9 that was created prior to the commencement of</p> <p>10 these lawsuits that identifies the Notes that</p> <p>11 are the subject of the agreements, correct?</p> <p>12 A. Correct.</p> <p>13 Q. Other than the Promissory Notes that</p> <p>14 are the subject of this lawsuit – withdrawn.</p> <p>15 Other than the Promissory Notes that</p> <p>16 are the subject of these lawsuits, are you</p> <p>17 aware of any other doc- – Promissory Notes</p> <p>18 that are the subject of an agreement with the</p> <p>19 Dugaboy trustee?</p> <p>20 A. I believe there are from time to</p> <p>21 time, yes. But I – I don't know off the top</p> <p>22 of my head.</p> <p>23 Q. Can you identify the maker of any</p> <p>24 Promissory Note that is the subject of any</p> <p>25 agreement with the Dugaboy trustee other than</p>

<p>Page 30</p> <p>1 JAMES DONDERO</p> <p>2 the Promissory Notes that are the subject of</p> <p>3 the pending lawsuits?</p> <p>4 A. Not specifically, but I believe</p> <p>5 there are.</p> <p>6 Q. Okay. Can you identify the</p> <p>7 principal amount of any Promissory Note that is</p> <p>8 the subject of an agreement with the Dugaboy</p> <p>9 trustee that is not part of the pending</p> <p>10 lawsuits?</p> <p>11 A. Not specifically.</p> <p>12 Q. Can you tell me the year in which</p> <p>13 any Promissory Note was ever executed that is</p> <p>14 the subject of any agreement with the Dugaboy</p> <p>15 trustee other than the Promissory Notes that</p> <p>16 are the subject of the pending lawsuits?</p> <p>17 A. I believe there were several, and I</p> <p>18 believe there were numerous ones over the</p> <p>19 years.</p> <p>20 Q. Okay. And -- and are those</p> <p>21 Promissory Notes subject to one of the three</p> <p>22 agreements that we've identified or subject to</p> <p>23 some other agreement with the Dugaboy trustee?</p> <p>24 A. Well, they weren't to these related</p> <p>25 entities. I -- I don't know what the</p>	<p>Page 31</p> <p>1 JAMES DONDERO</p> <p>2 agreements were specifically subject to.</p> <p>3 Q. Are you the person who entered into</p> <p>4 the agreement with the Dugaboy trustee</p> <p>5 concerning the notes that you are describing</p> <p>6 right now?</p> <p>7 A. Yes, I guess.</p> <p>8 Q. As the person who entered into the</p> <p>9 agreement with the Dugaboy trustee concerning</p> <p>10 Notes that are not the subject of the pending</p> <p>11 litigation, can you identify anything about</p> <p>12 those Notes, whether it's the maker, the date,</p> <p>13 the principal amount, anything at all?</p> <p>14 A. Not off the top of my head.</p> <p>15 Q. Okay. What would -- what would you</p> <p>16 have to look at to know? The chart or</p> <p>17 something else?</p> <p>18 A. No, not this -- not this chart.</p> <p>19 This only has to do with what we thought this</p> <p>20 deposition was going to be about.</p> <p>21 It would be the financials of</p> <p>22 Dugaboy; and then from there, the detail</p> <p>23 regarding any Notes that it has.</p> <p>24 Q. Did you enter into an agreement with</p> <p>25 the Dugaboy trustee to forgive a Promissory</p>
<p>Page 32</p> <p>1 JAMES DONDERO</p> <p>2 Note where Dugaboy is the maker and Highland is</p> <p>3 the payee?</p> <p>4 A. Dugaboy -- can you repeat that</p> <p>5 question one more time?</p> <p>6 Q. Sure. Did you enter into an</p> <p>7 agreement with the Dugaboy trustee relating to</p> <p>8 any Promissory Note where Dugaboy is the maker?</p> <p>9 A. No, I don't believe so.</p> <p>10 Q. Okay. So you don't have any</p> <p>11 recollection of ever entering into an agreement</p> <p>12 with the Dugaboy trustee concerning the</p> <p>13 potential forgiveness of any Note that was made</p> <p>14 by Dugaboy, correct?</p> <p>15 A. I -- I do not believe so.</p> <p>16 Q. Okay. And is there a -- is there a</p> <p>17 document that we could look at that would</p> <p>18 refresh your recollection?</p> <p>19 A. Not beyond the financials of Dugaboy</p> <p>20 and any relevant Note detail.</p> <p>21 Q. And would -- is it -- is it your</p> <p>22 testimony that an agreement with Dugaboy would</p> <p>23 be reflected in the Dugaboy financial</p> <p>24 statements?</p> <p>25 A. No, but the Notes would be.</p>	<p>Page 33</p> <p>1 JAMES DONDERO</p> <p>2 Q. Well, the Dugaboy Notes are</p> <p>3 reflected in Highland's financial statements.</p> <p>4 Do you want me to get that?</p> <p>5 A. No. I didn't think that was -- I</p> <p>6 didn't think that was the question you were</p> <p>7 asking me.</p> <p>8 Q. I apologize. Maybe it was my fault.</p> <p>9 What would we have to look at in</p> <p>10 order to refresh your recollection as to</p> <p>11 whether or not you entered into an agreement</p> <p>12 with the Dugaboy trustee concerning the</p> <p>13 potential forgiveness of any Note made by</p> <p>14 Dugaboy?</p> <p>15 A. Other than the ones we're talking</p> <p>16 about today, right?</p> <p>17 Q. We're not talking about -- there's</p> <p>18 no Promissory Note where Dugaboy is the maker</p> <p>19 that is the subject of any of the pending</p> <p>20 lawsuits, correct?</p> <p>21 A. Correct.</p> <p>22 Q. So I'm asking you to identify if you</p> <p>23 can any Promissory Note that is the subject of</p> <p>24 any agreement you have ever entered into with</p> <p>25 the Dugaboy trustee that is not the subject of</p>

<p style="text-align: right;">Page 34</p> <p>1 JAMES DONDERO</p> <p>2 one of the pending lawsuits.</p> <p>3 Do you understand that that's what</p> <p>4 I'm trying to get at?</p> <p>5 MS. DEITSCH-PEREZ: Asked and</p> <p>6 answered.</p> <p>7 THE WITNESS: Yes.</p> <p>8 BY MR. MORRIS:</p> <p>9 Q. Okay. Can you identify any such</p> <p>10 Promissory Note?</p> <p>11 A. No, not specifically as I sit here</p> <p>12 today.</p> <p>13 Q. Okay. Other than the promissory –</p> <p>14 withdrawn.</p> <p>15 Are you familiar with the term</p> <p>16 "majority interest" as used in the Highland</p> <p>17 Limited Partnership Agreement?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. Other than the Promissory</p> <p>20 Notes that are the subject of the pending</p> <p>21 lawsuits, are you aware of any other Promissory</p> <p>22 Notes that are the subject of any agreement</p> <p>23 with the majority interest?</p> <p>24 MS. DEITSCH-PEREZ: Object to the</p> <p>25 form. Asked and answered.</p>	<p style="text-align: right;">Page 35</p> <p>1 JAMES DONDERO</p> <p>2 THE WITNESS: The majority interest</p> <p>3 is controlled by the 75 percent. It's</p> <p>4 controlled by Dugaboy. But the majority</p> <p>5 interest isn't an entity in and of itself,</p> <p>6 right?</p> <p>7 BY MR. MORRIS:</p> <p>8 Q. Okay. Has Dugaboy held the majority</p> <p>9 interest since the time that Highland was</p> <p>10 created?</p> <p>11 A. No.</p> <p>12 Q. Okay. So – so then I'm going to</p> <p>13 ask my question again.</p> <p>14 Are you aware of any agreement</p> <p>15 concerning any Promissory Note that is the</p> <p>16 subject – withdrawn.</p> <p>17 Are you aware of any agreement with</p> <p>18 the majority interest that concerns any</p> <p>19 Promissory Note where Highland is the payee</p> <p>20 other than the Notes that are the subject of</p> <p>21 the pending lawsuit?</p> <p>22 MS. DEITSCH-PEREZ: Asked and</p> <p>23 answered.</p> <p>24 THE WITNESS: Not specifically as I</p> <p>25 sit here today, but I do believe there have</p>
<p style="text-align: right;">Page 36</p> <p>1 JAMES DONDERO</p> <p>2 been numerous notes other than to these</p> <p>3 entities today where Dugaboy was the maker</p> <p>4 or recipient or whatever.</p> <p>5 BY MR. MORRIS:</p> <p>6 Q. So you do believe that Dugaboy was</p> <p>7 the maker of a Promissory Note that's subject</p> <p>8 to an agreement with the majority interest?</p> <p>9 MS. DEITSCH-PEREZ: Object to the</p> <p>10 form.</p> <p>11 THE WITNESS: What I'm saying is I</p> <p>12 believe Dugaboy had other – made other</p> <p>13 Notes and received other Notes from other</p> <p>14 entities other than Highland.</p> <p>15 BY MR. MORRIS:</p> <p>16 Q. Does that have anything to do with</p> <p>17 Highland?</p> <p>18 Maybe I wasn't clear. I'm using the</p> <p>19 phrase "majority interest" as that phrase – I</p> <p>20 thought we had – I thought we had an</p> <p>21 understanding – as that phrase is used in the</p> <p>22 Highland Limited Partnership Agreement, right?</p> <p>23 A. I thought it was a definition term</p> <p>24 in the Highland, L.P.</p> <p>25 Q. It is, and I just – I'd like to</p>	<p style="text-align: right;">Page 37</p> <p>1 JAMES DONDERO</p> <p>2 move on if I can, but I just want some clarity</p> <p>3 here.</p> <p>4 Is there any agreement between</p> <p>5 Dugaboy and the majority interest concerning</p> <p>6 any Promissory Note where Dugaboy is the maker?</p> <p>7 MS. DEITSCH-PEREZ: Object to the</p> <p>8 form.</p> <p>9 THE WITNESS: I – I don't know what</p> <p>10 you're getting at. I have a tried to</p> <p>11 answer it the best I can several different</p> <p>12 ways.</p> <p>13 But try it one more time, and I'll</p> <p>14 try and answer it just specifically yes or</p> <p>15 no.</p> <p>16 BY MR. MORRIS:</p> <p>17 Q. Okay. Is Dugaboy the maker on any</p> <p>18 Promissory Note where Highland is the payee?</p> <p>19 A. I don't believe so at this point.</p> <p>20 Q. Was Dugaboy ever the maker on a Note</p> <p>21 where Highland was the payee to the best of</p> <p>22 your knowledge?</p> <p>23 A. I don't – I just don't know what</p> <p>24 the actual accounting was or could have or</p> <p>25 should have been. But if it prepays a Note,</p>

<p>Page 38</p> <p>1 JAMES DONDERO</p> <p>2 instead of prepaying a Note, it could have left</p> <p>3 it in an existing Note outstanding and then</p> <p>4 issued a separate Note, right, instead of</p> <p>5 prepaying, right?</p> <p>6 So I don't know in the -- in the pas</p> <p>7 past or how exactly they handled prepays</p> <p>8 consistently over time. But at the moment, I</p> <p>9 don't believe there's a loan going from Dugaboy</p> <p>10 to Highland.</p> <p>11 But I do believe over the years,</p> <p>12 there were numerous loans from Dugaboy to other</p> <p>13 entities other than the ones we're talking</p> <p>14 about today.</p> <p>15 MS. DEITSCH-PEREZ: Okay. John,</p> <p>16 we've gone way far afield of the topics for</p> <p>17 this deposition or anything that you ought</p> <p>18 to be even asking this individual witness</p> <p>19 about given what these litigations are.</p> <p>20 Could we move on, please?</p> <p>21 MR. MORRIS: No. Other than --</p> <p>22 MS. DEITSCH-PEREZ: You're spending</p> <p>23 time on things other than the --</p> <p>24 MR. MORRIS: Please stop talking.</p> <p>25 MS. DEITSCH-PEREZ: -- action.</p>	<p>Page 39</p> <p>1 JAMES DONDERO</p> <p>2 MR. MORRIS: Please stop talking.</p> <p>3 BY MR. MORRIS:</p> <p>4 Q. Other than the Promissory Notes that</p> <p>5 are the subject of the lawsuits, are you aware</p> <p>6 of any other Promissory Notes that are the</p> <p>7 subject of any agreement that the Dugaboy</p> <p>8 trustee ever entered into as a representative</p> <p>9 of the majority of Class A shareholders?</p> <p>10 MS. DEITSCH-PEREZ: Asked and</p> <p>11 answered. I think we've answered after the</p> <p>12 sixth time.</p> <p>13 THE WITNESS: Not as I sit here</p> <p>14 today.</p> <p>15 BY MR. MORRIS:</p> <p>16 Q. In paragraph 82 in about the fifth</p> <p>17 line down, there's a statement that, quote,</p> <p>18 "Nancy Dondero is representative for a majority</p> <p>19 of the Class A holders of plaintiff, agree that</p> <p>20 plaintiff would forgive the Notes."</p> <p>21 Do you see that?</p> <p>22 A. Yes.</p> <p>23 Q. The word "plaintiff" as used in your</p> <p>24 answer refers to Highland Capital Management,</p> <p>25 L.P., correct?</p>
<p>Page 40</p> <p>1 JAMES DONDERO</p> <p>2 A. I -- no -- or wait. Hold on a</p> <p>3 second.</p> <p>4 Yes. I guess, yes.</p> <p>5 Q. Okay. At the time you entered into</p> <p>6 the agreements, did you understand that</p> <p>7 Dugaboy, as a majority -- as a representative</p> <p>8 of a majority of the Class A shareholders of</p> <p>9 the plaintiff was the entity that entered into</p> <p>10 the agreement on behalf of Highland?</p> <p>11 A. Yes.</p> <p>12 Q. And your sister Nancy is the trustee</p> <p>13 of Dugaboy today, correct?</p> <p>14 A. Yes.</p> <p>15 Q. And Nancy was the trustee of Dugaboy</p> <p>16 at the time you entered into each of the</p> <p>17 agreements, correct?</p> <p>18 A. Yes.</p> <p>19 Q. And you knew that at the time you</p> <p>20 entered each of the agreements, correct?</p> <p>21 A. Yes.</p> <p>22 Q. You knew she was acting on behalf of</p> <p>23 Dugaboy, correct?</p> <p>24 A. Yes.</p> <p>25 Q. Your understanding at that time that</p>	<p>Page 41</p> <p>1 JAMES DONDERO</p> <p>2 you entered into each of the agreements with</p> <p>3 the Dugaboy trustee was that Dugaboy held the</p> <p>4 majority of Highland's Class A interest,</p> <p>5 correct?</p> <p>6 A. Yes.</p> <p>7 Q. And that's exactly why you contacted</p> <p>8 Nancy to discuss the topics that ultimately led</p> <p>9 to the agreements, correct?</p> <p>10 A. Yes.</p> <p>11 Q. You specifically called Nancy</p> <p>12 because you wanted her to cause Dugaboy to</p> <p>13 enter into the agreements with you on behalf of</p> <p>14 Highland, correct?</p> <p>15 A. Yes.</p> <p>16 Q. And just as you wanted, Nancy, in</p> <p>17 fact, caused Dugaboy, as a representative of a</p> <p>18 majority of the Class A shareholders of</p> <p>19 plaintiff, to enter into each of the</p> <p>20 agreements, correct?</p> <p>21 A. Yes.</p> <p>22 Q. Would you agree with me that the</p> <p>23 Promissory Notes that are the subject of the</p> <p>24 agreements were the debtor's property?</p> <p>25 A. I think I've stated numerous times</p>

<p style="text-align: right;">Page 42</p> <p>1 JAMES DONDERO</p> <p>2 due to them as that they would ultimately be</p> <p>3 compensation; but to be a bona fide Note and to</p> <p>4 have bona fide deferral at the time that they</p> <p>5 were issued, they were the debtor's property.</p> <p>6 And I guess they remained such until satisfied</p> <p>7 or until the condition as present – the</p> <p>8 condition subsequent is either triggered or</p> <p>9 impossible to be triggered.</p> <p>10 Q. Okay. Is it fair to say that the</p> <p>11 Promissory Notes that are the subject of the</p> <p>12 agreements were assets of the debtor at the</p> <p>13 time you entered into the agreements?</p> <p>14 A. Yes.</p> <p>15 Q. At the time you entered into the</p> <p>16 agreements, you understood that Dugaboy was</p> <p>17 exercising control over the debtor's property,</p> <p>18 correct?</p> <p>19 MS. DEITSCH-PEREZ: Object to the</p> <p>20 form.</p> <p>21 MR. MORRIS: Withdrawn.</p> <p>22 BY MR. MORRIS:</p> <p>23 Q. At the time you entered into the</p> <p>24 agreements, you understood that the Dugaboy</p> <p>25 trustee was going to exercise control over the</p>	<p style="text-align: right;">Page 43</p> <p>1 JAMES DONDERO</p> <p>2 debtor's property, correct?</p> <p>3 MS. DEITSCH-PEREZ: Object. Object</p> <p>4 to the form.</p> <p>5 THE WITNESS: Exercise control? I</p> <p>6 understood the trustee had the ability to</p> <p>7 grant the, whatever you want to call them,</p> <p>8 conditions subsequent.</p> <p>9 BY MR. MORRIS:</p> <p>10 Q. On that –</p> <p>11 A. Yes.</p> <p>12 Q. And that was – by entering into the</p> <p>13 agreement, would you agree with me, that the</p> <p>14 Dugaboy trustee exercised control over the</p> <p>15 Promissory Notes?</p> <p>16 MS. DEITSCH-PEREZ: Object to the</p> <p>17 form.</p> <p>18 THE WITNESS: They – The trustee</p> <p>19 exercised the rights given to it as a</p> <p>20 majority of Class A holders.</p> <p>21 BY MR. MORRIS:</p> <p>22 Q. Okay. And is it your understanding</p> <p>23 that as part of the right, it altered the</p> <p>24 characteristics of the Promissory Notes?</p> <p>25 MS. DEITSCH-PEREZ: Object to the</p>
<p style="text-align: right;">Page 44</p> <p>1 JAMES DONDERO</p> <p>2 form.</p> <p>3 THE WITNESS: I just want to – I</p> <p>4 believe my testimony, I granted the</p> <p>5 conditions subsequent is my interpretation.</p> <p>6 BY MR. MORRIS:</p> <p>7 Q. Right. And so that's fine. But</p> <p>8 that's – that's the thing that happened, but</p> <p>9 I'm just asking you what the impact of that</p> <p>10 was.</p> <p>11 When the Dugaboy trustee entered</p> <p>12 into the agreement, the result was that the</p> <p>13 terms and conditions of the Promissory Note</p> <p>14 were altered, correct?</p> <p>15 MS. DEITSCH-PEREZ: Object to the</p> <p>16 form.</p> <p>17 THE WITNESS: I don't want to – I</p> <p>18 want to say I don't know to that next week.</p> <p>19 BY MR. MORRIS:</p> <p>20 Q. You can't – okay. You can't tell</p> <p>21 me if your agreement with the Dugaboy trustee</p> <p>22 altered the terms and conditions of the</p> <p>23 Promissory Notes that were subject to the</p> <p>24 agreement; you can't tell me that?</p> <p>25 MS. DEITSCH-PEREZ: Object to the</p>	<p style="text-align: right;">Page 45</p> <p>1 JAMES DONDERO</p> <p>2 form.</p> <p>3 THE WITNESS: Yeah. I – again, it</p> <p>4 sounds like you're trying to take me</p> <p>5 towards legal terms of changing terms or</p> <p>6 modification in a Note or whatever; and</p> <p>7 I – I'm not – I don't have an opinion or</p> <p>8 the expert to comment on that.</p> <p>9 I can just say I knew she had the</p> <p>10 ability to create conditions subsequent.</p> <p>11 BY MR. MORRIS:</p> <p>12 Q. Okay. So let's take, for example,</p> <p>13 the Notes that you signed.</p> <p>14 Those were demand notes, right?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. And after you entered into</p> <p>17 the agreement with the Dugaboy trustee, instead</p> <p>18 of it being a demand note, it was now a demand</p> <p>19 note subject to conditions subsequent, correct?</p> <p>20 MS. DEITSCH-PEREZ: Object to the</p> <p>21 form.</p> <p>22 THE WITNESS: Yeah, that ultimately</p> <p>23 they couldn't be demanded until conditions</p> <p>24 subsequent were met or unable to be met.</p> <p>25</p>

<p>Page 46</p> <p>1 JAMES DONDERO</p> <p>2 BY MR. MORRIS:</p> <p>3 Q. Okay. So can you agree with me that</p> <p>4 that -- that that was a change in the term of</p> <p>5 the Note?</p> <p>6 MS. DEITSCH-PEREZ: Object to the</p> <p>7 form.</p> <p>8 THE WITNESS: Yeah. See, that's the</p> <p>9 part I don't want to comment on. I just</p> <p>10 want to say I don't know.</p> <p>11 BY MR. MORRIS:</p> <p>12 Q. Okay. Wasn't that the purpose of</p> <p>13 entering into the agreements was to change the</p> <p>14 terms of the each of the Promissory Notes?</p> <p>15 Wasn't that your intent?</p> <p>16 MS. DEITSCH-PEREZ: Object to the</p> <p>17 form.</p> <p>18 THE WITNESS: I'd say the intent was</p> <p>19 to find and make compensation appropriate</p> <p>20 for industry standards and Highland in</p> <p>21 particular.</p> <p>22 BY MR. MORRIS:</p> <p>23 Q. And did you believe that the Notes</p> <p>24 as originally drafted and signed by you or the</p> <p>25 representatives of the makers didn't take that</p>	<p>Page 47</p> <p>1 JAMES DONDERO</p> <p>2 into account?</p> <p>3 A. I went through this already last</p> <p>4 time, but the Notes were intentionally loose</p> <p>5 and, I think, anticipated the ability to adjust</p> <p>6 the subsequent conditions or other things.</p> <p>7 Q. Now, you told me that each of the</p> <p>8 agreements was entered into between December of</p> <p>9 one year or -- actually, withdrawn.</p> <p>10 If we look at paragraph 82, it says</p> <p>11 that each of the agreements was made, quote,</p> <p>12 "sometime between the December of the year in</p> <p>13 which each note was made and February of the</p> <p>14 following year."</p> <p>15 Do I have that right?</p> <p>16 A. Yes.</p> <p>17 Q. Can you identify with any greater</p> <p>18 specificity when you entered into the first</p> <p>19 agreement with the Dugaboy trustee referenced</p> <p>20 in paragraph 82?</p> <p>21 A. No.</p> <p>22 Q. It's sometime within that 90-day</p> <p>23 period; does that sound right to you?</p> <p>24 A. I believe it was closer to the</p> <p>25 holidays around the turn of the year, but I</p>
<p>Page 48</p> <p>1 JAMES DONDERO</p> <p>2 don't have specific recollection.</p> <p>3 Q. Is that answer the same for all</p> <p>4 three agreements or only for the first</p> <p>5 agreement?</p> <p>6 A. That would be the same for all</p> <p>7 three.</p> <p>8 Q. So then why -- why does paragraph 82</p> <p>9 refer to sometime between December of the year</p> <p>10 in which each note was made and February of the</p> <p>11 following year if your best recollection is</p> <p>12 that it happened around the holidays?</p> <p>13 A. I don't know.</p> <p>14 Q. All right. But as you sit here</p> <p>15 right now, is it your testimony that you</p> <p>16 believe each of the agreements was signed --</p> <p>17 was more likely signed in December rather than</p> <p>18 January or February?</p> <p>19 MS. DEITSCH-PEREZ: Object to the</p> <p>20 form.</p> <p>21 THE WITNESS: I think signed is a --</p> <p>22 I'm not -- I'm not testifying that signed,</p> <p>23 I guess.</p> <p>24 BY MR. MORRIS:</p> <p>25 Q. I apologize. Maybe that was my</p>	<p>Page 49</p> <p>1 JAMES DONDERO</p> <p>2 mistake.</p> <p>3 Is it your testimony that each --</p> <p>4 that you entered each of the agreements with</p> <p>5 the Dugaboy trustee in December rather than</p> <p>6 January or February of the years indicated?</p> <p>7 A. That's the best of my recollection,</p> <p>8 but there may have been one year that was</p> <p>9 towards the wider end of the interval. I can't</p> <p>10 remember with more specificity.</p> <p>11 Q. Okay. Do you know of anything that</p> <p>12 memorialized the date on which you entered into</p> <p>13 any of the agreements?</p> <p>14 A. No, other than -- no, other than --</p> <p>15 no, other than, you know, other than travel</p> <p>16 schedule or phone logs or whatever.</p> <p>17 Q. All right. During the discussion</p> <p>18 that led to the agreements, did you ever</p> <p>19 provide any information to Nancy or to Dugaboy</p> <p>20 concerning your compensation?</p> <p>21 A. Just -- just verbal. I mean, she</p> <p>22 knew it was low, and she knew we had reinvested</p> <p>23 most everything we made back in the company</p> <p>24 over the years. And that was the -- that was,</p> <p>25 I think, understanding by all involved; and it</p>

<p>Page 50</p> <p>1 JAMES DONDERO</p> <p>2 should be obvious to anybody who's looked at</p> <p>3 the numbers even in hindsight.</p> <p>4 MR. MORRIS: Okay. I move to</p> <p>5 strike.</p> <p>6 BY MR. MORRIS:</p> <p>7 Q. And please listen carefully to my</p> <p>8 question.</p> <p>9 During the discussions that led to</p> <p>10 each of the agreements, did you ever provide</p> <p>11 any information to your sister or Dugaboy</p> <p>12 concerning your compensation?</p> <p>13 MS. DEITSCH-PEREZ: Asked and</p> <p>14 answered.</p> <p>15 THE WITNESS: Not specifically.</p> <p>16 BY MR. MORRIS:</p> <p>17 Q. Did you provide any general</p> <p>18 information to your sister or to Dugaboy prior</p> <p>19 to the entry of any of the three agreements</p> <p>20 that you entered into with the Dugaboy trustee?</p> <p>21 A. I would repeat the answer that was</p> <p>22 struck two questions ago.</p> <p>23 Q. That's the information that you gave</p> <p>24 to her?</p> <p>25 A. Yeah. It was -- again, it was</p>	<p>Page 51</p> <p>1 JAMES DONDERO</p> <p>2 verbal, and it was -- but an understanding but</p> <p>3 a clear and obvious understanding.</p> <p>4 Q. I want to know exactly what</p> <p>5 information you gave to your sister and to</p> <p>6 Dugaboy before entering into any of the three</p> <p>7 agreements with the Dugaboy trustee?</p> <p>8 A. Most of what I had made over the</p> <p>9 years was rolled back into the business to</p> <p>10 propel growth and initiatives. And that my</p> <p>11 actual compensation was very modest based on</p> <p>12 industry standards and relevant</p> <p>13 responsibilities at Highland.</p> <p>14 Q. Did you tell her anything else?</p> <p>15 Withdrawn.</p> <p>16 Did you tell your -- Nancy or</p> <p>17 Dugaboy anything else beyond what you've now</p> <p>18 testified to?</p> <p>19 A. You know, I think some of what I</p> <p>20 testified to earlier, that forgiveness of the</p> <p>21 Notes would be a modest increase in that</p> <p>22 compensation but still not be in the ZIP code</p> <p>23 of fair and appropriate compensation and that</p> <p>24 the value of the Notes in aggregate were de</p> <p>25 minimis relative to Highland and de minimis</p>
<p>Page 52</p> <p>1 JAMES DONDERO</p> <p>2 relative to Dugaboy.</p> <p>3 Q. Did you tell her anything else?</p> <p>4 A. Anything else would have fallen into</p> <p>5 the buckets I just described, but I can't</p> <p>6 remember specifically as I sit here today.</p> <p>7 Q. Did you ever tell your sister or</p> <p>8 Dugaboy that your salary was less than a</p> <p>9 million dollars?</p> <p>10 A. I --</p> <p>11 MS. DEITSCH-PEREZ: I mean, just</p> <p>12 from Highland?</p> <p>13 THE WITNESS: Repeat the question</p> <p>14 again for me, please.</p> <p>15 BY MR. MORRIS:</p> <p>16 Q. Did you ever tell your sister that</p> <p>17 your salary was less than a million dollars a</p> <p>18 year?</p> <p>19 A. I know my sister was aware that it</p> <p>20 was very low, and it kind of decreased over</p> <p>21 time, and I think it was paid by different</p> <p>22 entities.</p> <p>23 Whether it was a million or</p> <p>24 2 million, I can't remember exactly what I</p> <p>25 would have told her; but it would have been in</p>	<p>Page 53</p> <p>1 JAMES DONDERO</p> <p>2 that ZIP code to paint the proper picture that</p> <p>3 the cash compensation for somebody in my role</p> <p>4 was well below industry standards.</p> <p>5 Q. Do you recall anything else that you</p> <p>6 shared with your sister concerning your</p> <p>7 compensation that you haven't testified to?</p> <p>8 A. Like I said, it would generally fall</p> <p>9 into those buckets as I sit here today.</p> <p>10 Q. Did your sister or Dugaboy ask you</p> <p>11 any questions about your compensation before</p> <p>12 entering into the three agreements that you</p> <p>13 entered into with the Dugaboy trustee?</p> <p>14 A. And, again, it would fall into the</p> <p>15 buckets I just described.</p> <p>16 Q. Can you -- can you recall any</p> <p>17 question that your sister or Dugaboy asked of</p> <p>18 you concerning your compensation before</p> <p>19 entering into the agreements?</p> <p>20 MS. DEITSCH-PEREZ: Asked answered.</p> <p>21 THE WITNESS: Again, I -- it would</p> <p>22 fall into the buckets I just described.</p> <p>23 BY MR. MORRIS:</p> <p>24 Q. Did you provide any documents to</p> <p>25 your sister or to Dugaboy concerning your</p>

<p>Page 54</p> <p>1 JAMES DONDERO</p> <p>2 compensation before entering into the</p> <p>3 agreements?</p> <p>4 A. No, not that I can recall.</p> <p>5 Q. Did your sister or Dugaboy ask you</p> <p>6 for any documents before entering into – into</p> <p>7 any of the agreements?</p> <p>8 A. I do not – I do not believe so.</p> <p>9 Q. Do you recall that in the ordinary</p> <p>10 course of business, Highland prepared a</p> <p>11 document called a Compensation and Benefits</p> <p>12 Statement for each of its employees?</p> <p>13 A. Yes.</p> <p>14 Q. And was that prepared by the Human</p> <p>15 Resources Group?</p> <p>16 A. Yes.</p> <p>17 Q. And was Mark Collins the head of the</p> <p>18 Human Resources Group?</p> <p>19 A. No.</p> <p>20 Q. Who was the head of the Human</p> <p>21 Resources Group?</p> <p>22 A. Brian Collins.</p> <p>23 Q. I apologize to Mr. Collins. Thank</p> <p>24 you for the correction.</p> <p>25 And Mr. Collins and his team were</p>	<p>Page 55</p> <p>1 JAMES DONDERO</p> <p>2 responsible for preparing the annual</p> <p>3 Compensation and Benefits Statements for</p> <p>4 Highland's employees, correct?</p> <p>5 A. Yes.</p> <p>6 Q. And did you instruct them to do</p> <p>7 that?</p> <p>8 A. Not specifically.</p> <p>9 Q. Okay.</p> <p>10 A. They do it every year. They do it</p> <p>11 every year as a matter of course, so I guess no</p> <p>12 is the answer.</p> <p>13 Q. Okay. So in the ordinary course of</p> <p>14 business, Mr. Collins and his team would</p> <p>15 prepare Compensation and Benefits Statements</p> <p>16 for each of Highland's employees on an annual</p> <p>17 basis, right?</p> <p>18 A. Yes.</p> <p>19 Q. Okay.</p> <p>20 MR. MORRIS: Can we please put up</p> <p>21 Exhibit 68.</p> <p>22 MS. CANTY: (Complies with request.)</p> <p>23</p> <p>24</p> <p>25</p>
<p>Page 56</p> <p>1 JAMES DONDERO</p> <p>2 (Whereupon, Exhibit 68, James</p> <p>3 Dondero Compensation and Benefits</p> <p>4 Statement, Bates stamped D-CNL003585,</p> <p>5 marked for identification, as of this</p> <p>6 date.)</p> <p>7 BY MR. MORRIS:</p> <p>8 Q. Do you see the document that's been</p> <p>9 premarked as Exhibit 68 that's up on the</p> <p>10 screen, sir?</p> <p>11 A. Yup.</p> <p>12 Q. And does this appear to be the form</p> <p>13 of annual Compensation and Benefits Statement</p> <p>14 that Mr. Collins and his team prepared on an</p> <p>15 annual basis for Highland's employees?</p> <p>16 A. This looks like the format, yes.</p> <p>17 Q. Okay. And the Compensation and</p> <p>18 Benefits Statement was intended to set forth</p> <p>19 the types and the amounts of compensation each</p> <p>20 employee received each year, correct?</p> <p>21 A. Yes, generally.</p> <p>22 Q. Okay. Did you ever disclose any</p> <p>23 information on this page to Nancy or to</p> <p>24 Dugaboy?</p> <p>25 A. Honestly, I don't think I've ever</p>	<p>Page 57</p> <p>1 JAMES DONDERO</p> <p>2 seen my award letters before.</p> <p>3 Q. Okay. So you never – so then it's</p> <p>4 a fair to say you never showed this letter to</p> <p>5 your sister or to Dugaboy, correct?</p> <p>6 A. Correct.</p> <p>7 Q. Okay. Did you ever disclose to</p> <p>8 Nancy or to Dugaboy the salary that's reflected</p> <p>9 on this document?</p> <p>10 A. I can't remember specifically beyond</p> <p>11 what I've already testified.</p> <p>12 Q. Did you ever describe for Nancy or</p> <p>13 for Dugaboy the 2016 deferred compensation</p> <p>14 award that's reflected on this document?</p> <p>15 A. No. I – by the way, I think that's</p> <p>16 only 20 percent vested a year. I think that's</p> <p>17 a gross amount. But no, I never – I never</p> <p>18 discussed that with her.</p> <p>19 Q. Okay. Do you see in the</p> <p>20 compensation award refers to 50,000 restricted</p> <p>21 stock units of NXRT relating to your 2016</p> <p>22 performance?</p> <p>23 A. Yes.</p> <p>24 Q. What is NXRT?</p> <p>25 A. That's the REIT that Highland used</p>

<p>Page 58</p> <p>1 JAMES DONDERO</p> <p>2 to own million shares of that series hold at 20</p> <p>3 that now trade at 70.</p> <p>4 Q. And is NexPoint REIT affiliated with</p> <p>5 NexPoint Advisors, L.P.?</p> <p>6 A. Yes.</p> <p>7 Q. And do you have an understanding of</p> <p>8 the nature of the relationship?</p> <p>9 A. Yes.</p> <p>10 Q. And what's -- what's your</p> <p>11 understanding of the nature of the relationship</p> <p>12 between NexPoint REIT and NexPoint Advisors,</p> <p>13 L.P.?</p> <p>14 A. It's the external manager of the</p> <p>15 REIT.</p> <p>16 Q. Okay. Did you ever tell Nancy or</p> <p>17 Dugaboy that you had received these restricted</p> <p>18 stock units in 2016?</p> <p>19 A. No. But again, the vested amount</p> <p>20 would have probably been about \$250,000 worth</p> <p>21 at that moment.</p> <p>22 Q. And did it vest over a couple of</p> <p>23 years?</p> <p>24 A. The first couple of years is vested</p> <p>25 over five years. I think now it vests over six</p>	<p>Page 59</p> <p>1 JAMES DONDERO</p> <p>2 or seven years. I don't remember whether the</p> <p>3 2016 award was five years, six years, or seven</p> <p>4 years.</p> <p>5 Q. Okay. We talked earlier about an</p> <p>6 expert that's been retained on your behalf.</p> <p>7 Do you remember that?</p> <p>8 A. Yes.</p> <p>9 Q. Do you recall if you or anybody</p> <p>10 acting on your behalf ever disclosed to that</p> <p>11 expert the restricted stock units reflected on</p> <p>12 this document?</p> <p>13 MS. DEITSCH-PEREZ: Object to the</p> <p>14 form.</p> <p>15 THE WITNESS: I don't know.</p> <p>16 MR. MORRIS: Let's put up</p> <p>17 Exhibit 50, please.</p> <p>18 MS. CANTY: (Complies with request.)</p> <p>19 (Whereupon, Exhibit 50, James</p> <p>20 Dondero Compensation and Benefits</p> <p>21 Statement, Bates stamped D-CNL003587,</p> <p>22 marked for identification, as of this</p> <p>23 date.)</p> <p>24 BY MR. MORRIS:</p> <p>25 Q. Do you see this is your benefits</p>
<p>Page 60</p> <p>1 JAMES DONDERO</p> <p>2 statement for 2017?</p> <p>3 A. Yes.</p> <p>4 Q. Did you ever disclose any of the</p> <p>5 information on this page to Nancy or to</p> <p>6 Dugaboy?</p> <p>7 A. No.</p> <p>8 Q. Did you ever disclose to Nancy or to</p> <p>9 Dugaboy that your base salary in 2017 was.</p> <p>10 2,500,024?</p> <p>11 MS. DEITSCH-PEREZ: Object to the</p> <p>12 form.</p> <p>13 THE WITNESS: Not specifically, no,</p> <p>14 other than the buckets we talked about</p> <p>15 earlier.</p> <p>16 Like I said earlier, I'm not sure if</p> <p>17 I have ever seen these before. But I also</p> <p>18 -- until it's verified, I don't want to --</p> <p>19 everybody to assume that the base salary</p> <p>20 came a hundred percent from Highland or if</p> <p>21 it was also from some other entity.</p> <p>22 Because for the purposes of this letter,</p> <p>23 Brian Collins wouldn't have -- we have</p> <p>24 numerous or several employees that are dual</p> <p>25 employees. And whether their base salary</p>	<p>Page 61</p> <p>1 JAMES DONDERO</p> <p>2 came from one or multiple entities, he</p> <p>3 wouldn't have differentiated in that line.</p> <p>4 So I don't know whether that amount,</p> <p>5 that 2.5 million came from Highland or a</p> <p>6 combination of Highland/NexPoint or some</p> <p>7 other entities. I don't know.</p> <p>8 BY MR. MORRIS:</p> <p>9 Q. And who made the decision as to how</p> <p>10 to allocate the base salary?</p> <p>11 A. I don't know. I -- I mean, I don't</p> <p>12 know how it was split. But my recollection of</p> <p>13 my Highland base salary is that it was</p> <p>14 diminishing over time.</p> <p>15 Q. And -- and as the president of</p> <p>16 Highland and as the president of NexPoint, did</p> <p>17 you have any say as to how your salary was</p> <p>18 allocated between those two entities?</p> <p>19 A. Not that I recall.</p> <p>20 Q. Do you have any idea the basis on</p> <p>21 which your salary was allocated between those</p> <p>22 two entities?</p> <p>23 A. No.</p> <p>24 Q. Do you think -- do -- do you have</p> <p>25 any understanding that it was allocated based</p>

<p>Page 62</p> <p>1 JAMES DONDERO</p> <p>2 on the amount of time you spent working for</p> <p>3 each of those entities?</p> <p>4 A. I have no idea.</p> <p>5 Q. If your salary was \$500,000 from</p> <p>6 Highland in 2017 and \$2 million to NexPoint,</p> <p>7 can you – can you think of any reason why it</p> <p>8 would be allocated in that way?</p> <p>9 MS. DEITSCH-PEREZ: Object to the</p> <p>10 form.</p> <p>11 THE WITNESS: Cash, cash</p> <p>12 availability. I – I don't know.</p> <p>13 BY MR. MORRIS:</p> <p>14 Q. Okay. Did you devote your full time</p> <p>15 and attention to Highland Capital Management,</p> <p>16 L.P.?</p> <p>17 A. I spread my time as appropriate</p> <p>18 across a variety of entities.</p> <p>19 Q. Can you identify for me the entities</p> <p>20 that you spread your time across?</p> <p>21 A. Highland, NexPoint, HCMFA, HCRE.</p> <p>22 Q. How about Highland Management</p> <p>23 Services, Inc.?</p> <p>24 A. Yes.</p> <p>25 Q. Are there any others?</p>	<p>Page 63</p> <p>1 JAMES DONDERO</p> <p>2 A. Yes.</p> <p>3 Q. Can you identify any other companies</p> <p>4 to which you devoted your time and attention?</p> <p>5 A. Not off the top of my head. I'm</p> <p>6 willing to be refreshed. But over the years</p> <p>7 there's been multiple initiatives at Highland</p> <p>8 that have come and gone and private equity</p> <p>9 companies that have come and gone and other</p> <p>10 initiatives that have come and gone.</p> <p>11 Q. Do you see the reference to the</p> <p>12 65,772 restricted stock units of the NexPoint</p> <p>13 REIT there on this document?</p> <p>14 A. Yes.</p> <p>15 Q. And was that, to the best of your</p> <p>16 recollection, the award that you were granted</p> <p>17 in connection with your 2017 performance?</p> <p>18 A. It would have been for – it would</p> <p>19 have been the prior awards at – it would have</p> <p>20 been for the prior years' awards at NFLP. And</p> <p>21 it would have been – it would have been the</p> <p>22 same five- or seven-year vesting schedule.</p> <p>23 MR. MORRIS: Now I'm looking at my</p> <p>24 phone, and I don't see, Deborah, any e-mail</p> <p>25 from your firm.</p>
<p>Page 64</p> <p>1 JAMES DONDERO</p> <p>2 MS. DEITSCH-PEREZ: Yeah. On a</p> <p>3 break, I'll take a picture of it and send</p> <p>4 it to you.</p> <p>5 Do you want a break now?</p> <p>6 MR. MORRIS: I really – I really</p> <p>7 don't. And I don't know why I can't get an</p> <p>8 e-mail copy rather than a photograph. It's</p> <p>9 not going to be – it's not going to be</p> <p>10 easy to read, and you know that?</p> <p>11 MS. DEITSCH-PEREZ: It'll be</p> <p>12 perfectly fine. If you can't, let me know;</p> <p>13 and then I'll take the time to try and find</p> <p>14 it. But the fastest way to get it to you</p> <p>15 is to take a picture of it.</p> <p>16 BY MR. MORRIS:</p> <p>17 Q. Mr. Dondero, did you ever tell Nancy</p> <p>18 or Dugaboy that you had received the restricted</p> <p>19 stock units from the NexPoint REIT as reflected</p> <p>20 on this page?</p> <p>21 A. You're – you're saying the</p> <p>22 \$1.55-million number that was really 200,000</p> <p>23 vested or 300,000 vested?</p> <p>24 Q. No. I'm not talking about the</p> <p>25 value. I'm just talking about the restricted</p>	<p>Page 65</p> <p>1 JAMES DONDERO</p> <p>2 units.</p> <p>3 Did you ever tell them – let's keep</p> <p>4 it – let's keep it simple, and let's make it</p> <p>5 really broad.</p> <p>6 Did you ever tell Nancy or Dugaboy</p> <p>7 that you received restricted stock units as</p> <p>8 part of your compensation?</p> <p>9 A. I – I don't remember.</p> <p>10 Q. Okay. Did you ever – because this</p> <p>11 will speed it up.</p> <p>12 Did you ever tell your expert that</p> <p>13 you received restricted stock units as part of</p> <p>14 your compensation?</p> <p>15 MS. DEITSCH-PEREZ: Object to the</p> <p>16 form.</p> <p>17 THE WITNESS: I don't – I don't</p> <p>18 remember.</p> <p>19 BY MR. MORRIS:</p> <p>20 Q. Did you ever direct anyone acting on</p> <p>21 your behalf to share with your expert that you</p> <p>22 had received restricted stock units as a form</p> <p>23 of compensation?</p> <p>24 MS. DEITSCH-PEREZ: Object to the</p> <p>25 form.</p>

<p style="text-align: right;">Page 66</p> <p>1 JAMES DONDERO</p> <p>2 THE WITNESS: I not – I wasn't</p> <p>3 involved.</p> <p>4 MR. MORRIS: All right. You know,</p> <p>5 what, Deborah, let's take a break; and why</p> <p>6 don't you send me that document.</p> <p>7 It is now 3:28. Let's come back at</p> <p>8 3:40 Eastern, and let's please be on time</p> <p>9 because I'd like to try to finish this</p> <p>10 today. Thank you.</p> <p>11 THE VIDEOGRAPHER: Off the record at</p> <p>12 2:28.</p> <p>13 (Whereupon, a break was taken.)</p> <p>14 THE VIDEOGRAPHER: We are back on</p> <p>15 the record. The time is 2:43.</p> <p>16 MR. MORRIS: I received from counsel</p> <p>17 a photograph in text message form of the</p> <p>18 document that Mr. Dondero was referring to</p> <p>19 at the beginning of the deposition.</p> <p>20 I'm going to ask for that production</p> <p>21 – for the production of that document with</p> <p>22 a Bates number by the end of the day, and I</p> <p>23 hope that could be accommodated.</p> <p>24 MS. DEITSCH-PEREZ: I'm not sure –</p> <p>25 John, I'm not sure it will be by the end of</p>	<p style="text-align: right;">Page 67</p> <p>1 JAMES DONDERO</p> <p>2 the day because I don't know when the</p> <p>3 people who do the Bates stamping leave.</p> <p>4 But if it's not today, it will be tomorrow.</p> <p>5 MR. MORRIS: All right. It's 2:44</p> <p>6 in the afternoon your time. I hope that</p> <p>7 your firm has the capability of Bates</p> <p>8 stamping and producing one page before the</p> <p>9 close of business.</p> <p>10 MS. DEITSCH-PEREZ: Okay. But I'm</p> <p>11 not going to get – John, what difference</p> <p>12 does it make whether it's tonight or</p> <p>13 tomorrow?</p> <p>14 MR. MORRIS: You know what, I really</p> <p>15 want to use it in the deposition now, but I</p> <p>16 can't do that because – because you're not</p> <p>17 able – because you – because apparently,</p> <p>18 you can't even promise to do it by the end</p> <p>19 of the day.</p> <p>20 BY MR. MORRIS:</p> <p>21 Q. Mr. Dondero –</p> <p>22 MS. DEITSCH-PEREZ: Could you –</p> <p>23 could you use it –</p> <p>24 MR. MORRIS: I'd like to –</p> <p>25 MS. DEITSCH-PEREZ: – if I sent it</p>
<p style="text-align: right;">Page 68</p> <p>1 JAMES DONDERO</p> <p>2 to you by e-mail instead.</p> <p>3 MR. MORRIS: I'd like to proceed.</p> <p>4 You can e-mail it to me. I mean, I</p> <p>5 asked you to do that an hour ago.</p> <p>6 MS. DEITSCH-PEREZ: Well, the</p> <p>7 easiest way to do it is to send a picture</p> <p>8 is to text it; but if you give me a minute,</p> <p>9 I'll figure out how to send it by e-mail.</p> <p>10 Give me a second. Let's see.</p> <p>11 It just takes a second because it</p> <p>12 goes into my personal e-mail first if it's</p> <p>13 from my iPhone. Okay.</p> <p>14 MR. MORRIS: Can we proceed?</p> <p>15 MS. DEITSCH-PEREZ: Yeah. Give me a</p> <p>16 minute and you'll have it.</p> <p>17 Okay. You should have it in your</p> <p>18 e-mail now, John.</p> <p>19 MR. MORRIS: Thank you. All right.</p> <p>20 I'll let you know when it arrives.</p> <p>21 BY MR. MORRIS:</p> <p>22 Q. Mr. Dondero, the questions now are</p> <p>23 going to be both in your individual capacity</p> <p>24 and in your capacity as the 30(b)(6) witness.</p> <p>25 Do you understand that?</p>	<p style="text-align: right;">Page 69</p> <p>1 JAMES DONDERO</p> <p>2 A. Okay.</p> <p>3 Q. Okay.</p> <p>4 A. It's either – it's either/or; it's</p> <p>5 not one?</p> <p>6 Q. No.</p> <p>7 A. Okay.</p> <p>8 Q. You contend that the Notes are</p> <p>9 subject to the – withdrawn.</p> <p>10 You contend that the Notes that are</p> <p>11 the subject of the agreements would be forgiven</p> <p>12 upon the fulfillment of certain conditions</p> <p>13 present, right?</p> <p>14 A. Right.</p> <p>15 MS. DEITSCH-PEREZ: Object to the</p> <p>16 form. He said "subsequent."</p> <p>17 MR. MORRIS: I apologize. Let me</p> <p>18 restate the question.</p> <p>19 BY MR. MORRIS:</p> <p>20 Q. You contend that the Notes subject</p> <p>21 to the agreement should be forgiven or would be</p> <p>22 forgiven upon the fulfillment of certain</p> <p>23 conditions subsequent, correct?</p> <p>24 A. Yes.</p> <p>25 Q. And to the best of your knowledge,</p>

<p>Page 70</p> <p>1 JAMES DONDERO</p> <p>2 none of those conditions have occurred as of</p> <p>3 today, correct?</p> <p>4 A. To the best of my knowledge, yes.</p> <p>5 Q. Okay. You're not aware of any facts</p> <p>6 showing that any of the conditions subsequent</p> <p>7 have been satisfied, fair?</p> <p>8 A. I – yeah. I wouldn't know. You</p> <p>9 would probably know. I don't know.</p> <p>10 Q. I'm only asking for your knowledge.</p> <p>11 One of the conditions subsequent was</p> <p>12 that the Notes would be forgiven if you caused</p> <p>13 Highland to sell its interest in one of three</p> <p>14 portfolio companies above cost, right?</p> <p>15 MS. DEITSCH-PEREZ: Object to the</p> <p>16 form.</p> <p>17 THE WITNESS: I – yeah. I don't</p> <p>18 know if the noun is me or Highland, but</p> <p>19 yeah.</p> <p>20 BY MR. MORRIS:</p> <p>21 Q. Okay. The portfolio companies at</p> <p>22 issue were MGM, Comerstone, and Trustway,</p> <p>23 correct?</p> <p>24 A. Yes.</p> <p>25 Q. And prior to the petition date, you</p>	<p>Page 71</p> <p>1 JAMES DONDERO</p> <p>2 had the authority to sell any of those</p> <p>3 portfolio companies at any time without having</p> <p>4 to obtain approval from anyone, correct?</p> <p>5 MS. DEITSCH-PEREZ: Object to the</p> <p>6 form.</p> <p>7 THE WITNESS: Yeah. No, I can't</p> <p>8 agree with that statement.</p> <p>9 BY MR. MORRIS:</p> <p>10 Q. Why not?</p> <p>11 Who's approval did you have to get</p> <p>12 before you could sell any of those portfolio</p> <p>13 companies?</p> <p>14 A. MGM, I was one board member and I</p> <p>15 think an aggregate. When I was running</p> <p>16 Highland, we spoke for 18 percent of the</p> <p>17 equity. So I couldn't force the overall sale</p> <p>18 of the company unilaterally.</p> <p>19 There was also a shareholder's</p> <p>20 agreement in place that restricted myself and</p> <p>21 Anchorage and a couple of the large holders</p> <p>22 from selling their shares without a disclosure</p> <p>23 and approval process. That is one example.</p> <p>24 With regard to Trustway, I believe I</p> <p>25 was largely unfettered.</p>
<p>Page 72</p> <p>1 JAMES DONDERO</p> <p>2 With regard to Comerstone, a</p> <p>3 majority of it – or not a majority, but a</p> <p>4 significant minority, I think, was owned by</p> <p>5 both Restoration and the Old Redeemer Fund.</p> <p>6 Q. All right. Well, let me ask you</p> <p>7 this: The conditions subsequent that are</p> <p>8 embedded in the agreements, did that relate to</p> <p>9 just Highland's interests in the portfolio</p> <p>10 companies, or did it relate to interests held</p> <p>11 by anybody else?</p> <p>12 A. It referred to a monetization in</p> <p>13 creating liquidity around Highland's interests</p> <p>14 that were large and illiquid portions of</p> <p>15 Highland's balance sheet.</p> <p>16 Q. Okay. So let me ask the question</p> <p>17 again.</p> <p>18 Prior to the petition date, did you</p> <p>19 have the authority to sell Highland's interests</p> <p>20 in any of the portfolio companies without</p> <p>21 having to obtain the authority of anybody else?</p> <p>22 MS. DEITSCH-PEREZ: Object to the</p> <p>23 form. Asked and answered.</p> <p>24 THE WITNESS: Sub- – subject to my</p> <p>25 prior answer, I could speak for Highland</p>	<p>Page 73</p> <p>1 JAMES DONDERO</p> <p>2 prior to the bankruptcy.</p> <p>3 BY MR. MORRIS:</p> <p>4 Q. Okay. Before entering into the</p> <p>5 agreements, did you or anybody acting on your</p> <p>6 behalf analyze the likelihood that any of the</p> <p>7 conditions subsequent would occur?</p> <p>8 A. Likelihood? Analyze? My</p> <p>9 description of them, which was my understanding</p> <p>10 of them, but my description of the assets to my</p> <p>11 sister was – to the trustee of Dugaboy was</p> <p>12 that we held them for a long time. We were</p> <p>13 working towards monetization, but there wasn't</p> <p>14 anything imminent regarding any of them in 2017</p> <p>15 or '18.</p> <p>16 Q. Well, but the actual sale is just</p> <p>17 one part of the condition subsequent, correct?</p> <p>18 The other part is that it's got to</p> <p>19 be sold above cost; is that correct?</p> <p>20 A. That is right.</p> <p>21 Q. Okay. So at the time you entered</p> <p>22 into each of your – each of the three</p> <p>23 agreements, had you done any analysis to</p> <p>24 determine whether or not any – whether</p> <p>25 Highland's interests in any of the portfolio</p>

<p>Page 74</p> <p>1 JAMES DONDERO</p> <p>2 companies exceeded its cost?</p> <p>3 A. No, but I – yes. No, I did not.</p> <p>4 Q. Did you have any understanding at</p> <p>5 all as to how the value of Highland's interests</p> <p>6 in MGM compared to its costs at the time you</p> <p>7 entered into each of these three agreements?</p> <p>8 A. No. I mean, my understanding was I</p> <p>9 knew they were substantially higher, but I</p> <p>10 didn't know how much higher.</p> <p>11 Q. Okay. So is it fair to say that the</p> <p>12 time – at the time you entered into each of</p> <p>13 these agreements, you knew and understood that</p> <p>14 the value of Highland's interests in MGM was</p> <p>15 substantially higher than its costs?</p> <p>16 A. For MGM, yes.</p> <p>17 Q. Okay. Did you have an understanding</p> <p>18 of the relationship between value and costs</p> <p>19 concerning Cornerstone at the time you entered</p> <p>20 into these agreements?</p> <p>21 A. My understanding it was moderately</p> <p>22 higher, and Trustway was between substantially</p> <p>23 and moderately and higher, I believe.</p> <p>24 Q. Okay. So is it fair to say that at</p> <p>25 the time you entered into each of these</p>	<p>Page 75</p> <p>1 JAMES DONDERO</p> <p>2 agreements, you believed that the value of</p> <p>3 Highland's interests in each of the portfolio</p> <p>4 companies exceeded its costs in varying</p> <p>5 degrees?</p> <p>6 A. Varying degrees. As a matter of</p> <p>7 fact, I would adjust. Cornerstone and</p> <p>8 Trustway, I believe, were moderately higher</p> <p>9 than their embedded costs or implied costs.</p> <p>10 That was my understanding.</p> <p>11 MGM was somewhat substantially. But</p> <p>12 all of them with a fair amount of volatility</p> <p>13 and a fair amount of illiquidity.</p> <p>14 Q. Did you ever give your sister or</p> <p>15 Dugaboy any information concerning how the</p> <p>16 value of Highland's interests in any of the</p> <p>17 portfolio companies compared to Highland's</p> <p>18 costs before entering into the agreements?</p> <p>19 A. Not that I recall.</p> <p>20 Q. Do you have any reason to believe</p> <p>21 that your sister or Dugaboy had any</p> <p>22 understanding as to the likelihood that the</p> <p>23 conditions subsequent would be satisfied at the</p> <p>24 time the Dugaboy trustee entered into the three</p> <p>25 agreements with you?</p>
<p>Page 76</p> <p>1 JAMES DONDERO</p> <p>2 MS. DEITSCH-PEREZ: Object to the</p> <p>3 form.</p> <p>4 THE WITNESS: I – I remember saying</p> <p>5 it would take a few years at minimum; but</p> <p>6 other than expressing time, I don't believe</p> <p>7 I expressed value versus cost or the</p> <p>8 questions you were asking me previously.</p> <p>9 BY MR. MORRIS:</p> <p>10 Q. Okay. You never showed Nancy or</p> <p>11 Dugaboy any of the Promissory Notes prior to</p> <p>12 entering into any of the agreements, correct?</p> <p>13 A. Not that I recall.</p> <p>14 Q. And you never sent copies of the</p> <p>15 Promissory Notes to Nancy or Dugaboy before</p> <p>16 entering into any of these agreements, correct?</p> <p>17 A. Not that I recall.</p> <p>18 MS. DEITSCH-PEREZ: Object to the</p> <p>19 form.</p> <p>20 John, you've asked these at the last</p> <p>21 deposition and actually also at the first</p> <p>22 day of the deposition.</p> <p>23 MR. MORRIS: Thank you. He's here</p> <p>24 now in his 30(b)(6) capacity. So please</p> <p>25 just stop.</p>	<p>Page 77</p> <p>1 JAMES DONDERO</p> <p>2 You can object to the form of the</p> <p>3 question. I really don't appreciate it.</p> <p>4 You should follow the very professional job</p> <p>5 that your colleague, Michael Aigen, did the</p> <p>6 other day.</p> <p>7 BY MR. MORRIS:</p> <p>8 Q. Neither Nancy or Dugaboy has ever</p> <p>9 asked to see copies of any of the Promissory</p> <p>10 Notes before entering into any of the</p> <p>11 agreements, correct?</p> <p>12 MS. DEITSCH-PEREZ: Object to the</p> <p>13 form.</p> <p>14 THE WITNESS: I don't know.</p> <p>15 BY MR. MORRIS:</p> <p>16 Q. Do you have any reason to believe</p> <p>17 that Nancy or Dugaboy ever saw a copy of any of</p> <p>18 the Promissory Notes at issue before entering</p> <p>19 into the agreements?</p> <p>20 A. I don't know.</p> <p>21 Q. During your discussions with Nancy</p> <p>22 and Dugaboy, did you identify the Promissory</p> <p>23 Notes that were going to be the subject of each</p> <p>24 agreement?</p> <p>25 MS. DEITSCH-PEREZ: Object to the</p>

<p>Page 78</p> <p>1 JAMES DONDERO</p> <p>2 form.</p> <p>3 You know, we made an agreement that</p> <p>4 you were going to refer to Nancy as the</p> <p>5 Dugaboy trustee. Please stick to it.</p> <p>6 Otherwise, I'm going to have to object each</p> <p>7 time, and I'd rather not.</p> <p>8 MR. MORRIS: I have no problem with</p> <p>9 your objecting to the form of the question.</p> <p>10 It's the speaking that I really do object</p> <p>11 to. And I don't know why you can't control</p> <p>12 yourself.</p> <p>13 MS. DEITSCH-PEREZ: Because I</p> <p>14 hope that –</p> <p>15 MR. MORRIS: Please stop. Please</p> <p>16 stop.</p> <p>17 MS. DEITSCH-PEREZ: – by telling</p> <p>18 you this, you will listen.</p> <p>19 MR. MORRIS: Okay. Your discussion</p> <p>20 and your inability to control yourself is</p> <p>21 going to cause this deposition to go longer</p> <p>22 than it needs to, okay?</p> <p>23 MS. DEITSCH-PEREZ: No. It's your</p> <p>24 repeating questions that's going to do</p> <p>25 that.</p>	<p>Page 79</p> <p>1 JAMES DONDERO</p> <p>2 MR. MORRIS: You let me know when</p> <p>3 you're done.</p> <p>4 MS. DEITSCH-PEREZ: I'm done.</p> <p>5 BY MR. MORRIS:</p> <p>6 Q. Mr. Dondero, during your discussions</p> <p>7 with the Dugaboy trustee, did you identify the</p> <p>8 Promissory Notes that were going to be the</p> <p>9 subject of each agreement?</p> <p>10 MS. DEITSCH-PEREZ: Object to the</p> <p>11 form.</p> <p>12 THE WITNESS: No, not that I recall.</p> <p>13 BY MR. MORRIS:</p> <p>14 Q. Do you recall – during your</p> <p>15 discussions with the Dugaboy trustee, did you</p> <p>16 identify the maker of any of the Notes that</p> <p>17 were the subject of any of the agreements?</p> <p>18 A. You mean Highland as the maker; is</p> <p>19 that what you're saying?</p> <p>20 Q. No. I'm just asking if during your</p> <p>21 discussions with the Dugaboy trustee, you ever</p> <p>22 disclosed the name of the maker of any of the</p> <p>23 Notes that were subject to the agreements?</p> <p>24 A. She – she knew they were Notes due</p> <p>25 to Highland from various entities. So I don't</p>
<p>Page 80</p> <p>1 JAMES DONDERO</p> <p>2 know what your question is. Did I identify</p> <p>3 specifically that they were Notes due to</p> <p>4 Highland? I guess the answer to that is yes,</p> <p>5 but I don't know what you're asking me.</p> <p>6 Q. I'm sorry, sir. I'll take the</p> <p>7 responsibility for that.</p> <p>8 I'm asking you if you identified who</p> <p>9 the maker of the Notes were, not who the payee</p> <p>10 was.</p> <p>11 MS. DEITSCH-PEREZ: You mean the</p> <p>12 borrowers, John?</p> <p>13 THE WITNESS: See, I don't want to</p> <p>14 get stuck in my underwear on maker/borrower</p> <p>15 nomenclature.</p> <p>16 She was aware that they were notes</p> <p>17 due to Highland from a variety of entities.</p> <p>18 BY MR. MORRIS:</p> <p>19 Q. Okay. Did you identify any of those</p> <p>20 entities?</p> <p>21 A. I – yeah. She knew that some were</p> <p>22 Dugaboy, some were NexPoint for sure, and some</p> <p>23 were other entities.</p> <p>24 Q. So – so there were notes where</p> <p>25 Dugaboy owed the money or was the obligor or</p>	<p>Page 81</p> <p>1 JAMES DONDERO</p> <p>2 was the borrower or was the maker that are</p> <p>3 subject to agreements that you entered into</p> <p>4 with the Dugaboy trustee?</p> <p>5 A. No. Wait. The Dugaboy – the</p> <p>6 Dugaboy Notes weren't subject to the</p> <p>7 forgiveness. It was the other notes that were</p> <p>8 subject to forgiveness.</p> <p>9 Q. So it's really kind of a simple</p> <p>10 question, and I'm not trying to trick you.</p> <p>11 If you think back to the</p> <p>12 conversations that you had with the Dugaboy</p> <p>13 trustee, did you identify the entity of – did</p> <p>14 you identify who the borrowers were under the</p> <p>15 Notes that were going to be subject to the</p> <p>16 agreements?</p> <p>17 A. She knew they were entities – she</p> <p>18 knew there were other related entities. She</p> <p>19 knew NexPoint for sure. She knew Services.</p> <p>20 I can't sit here as I remember – as</p> <p>21 I sit here today and remember whether or not I</p> <p>22 specifically identified HCRE or not, you know;</p> <p>23 but she knew they were related entities.</p> <p>24 Q. All of the revisions of the</p> <p>25 agreement are set forth in paragraph 82; is</p>

<p>Page 82</p> <p>1 JAMES DONDERO</p> <p>2 that right?</p> <p>3 We could put it back up on the</p> <p>4 screen if you'd like.</p> <p>5 MR. MORRIS: In fact, why don't we</p> <p>6 do that.</p> <p>7 MS. CANTY: I'm sorry, John. 51 –</p> <p>8 I mean, 50?</p> <p>9 MR. MORRIS: I think it's</p> <p>10 Exhibit 31, paragraph 82.</p> <p>11 MS. CANTY: Oh, okay, 82. I've got</p> <p>12 you.</p> <p>13 MR. MORRIS: Thank you.</p> <p>14 BY MR. MORRIS:</p> <p>15 Q. Does – Mr. Dondero, other than</p> <p>16 specifying who the portfolio companies were,</p> <p>17 does paragraph 82 set forth all of the material</p> <p>18 terms of each of the agreements?</p> <p>19 A. I think it sets forth the conditions</p> <p>20 subsequent.</p> <p>21 Q. Is there any aspect of your</p> <p>22 agreement – withdrawn.</p> <p>23 Is there any aspect of your</p> <p>24 agreements with the Dugaboy trustees that's not</p> <p>25 described in this paragraph?</p>	<p>Page 83</p> <p>1 JAMES DONDERO</p> <p>2 A. I don't know if it's captured in</p> <p>3 there, but there was definitely a conversation,</p> <p>4 discussion that if something like MGM was</p> <p>5 sold – Anchorage is the largest holder almost</p> <p>6 a majority in and of themselves. And if it was</p> <p>7 bought or taken out at a price that we couldn't</p> <p>8 control or couldn't agree with and it was lower</p> <p>9 than cost or – you know, Cornerstone, again,</p> <p>10 had multiple funds between our ownership and</p> <p>11 control that if – if things were sold</p> <p>12 beyond – without my support but sold below</p> <p>13 cost – and I'm not sure that's captured in</p> <p>14 that paragraph, but I think that was part of</p> <p>15 the understanding, also.</p> <p>16 Q. Is there any other part of the</p> <p>17 understanding that's not set forth in</p> <p>18 paragraph 82, Mr. Dondero?</p> <p>19 A. Not that I can think of at this –</p> <p>20 let me read it one more time, please.</p> <p>21 Q. Take your time.</p> <p>22 A. I believe that generally covers it.</p> <p>23 Q. Was any provision of the agreements</p> <p>24 the subject of negotiation?</p> <p>25 MS. DEITSCH-PEREZ: Object to the</p>
<p>Page 84</p> <p>1 JAMES DONDERO</p> <p>2 form.</p> <p>3 THE WITNESS: I don't believe it was</p> <p>4 materially adjusted by any negotiation. It</p> <p>5 was just clarified based on discussion is</p> <p>6 how I would describe it.</p> <p>7 BY MR. MORRIS:</p> <p>8 Q. Is there any provision in the</p> <p>9 agreements that was included at your sis- – at</p> <p>10 the Dugaboy trustee's request?</p> <p>11 A. Like I said, there was discussion</p> <p>12 and clarification. Not specifically that I</p> <p>13 recall.</p> <p>14 Q. Okay. Did the Dugaboy trustee</p> <p>15 refuse to include any provision in the</p> <p>16 agreement that you had proposed?</p> <p>17 A. Not that I recall.</p> <p>18 Q. Can you identify any provision of</p> <p>19 the agreements that were the subject of a</p> <p>20 counterproposal that the Dugaboy trustee made?</p> <p>21 A. I remember clarification discussion</p> <p>22 around, you know, three companies versus two or</p> <p>23 one. I remember clarification of monetization</p> <p>24 being turned to cash versus illiquid.</p> <p>25 Yeah. I mean, I remember</p>	<p>Page 85</p> <p>1 JAMES DONDERO</p> <p>2 discussion – I remember clarification</p> <p>3 discussions like that, but I don't remember –</p> <p>4 it was a long time ago. I don't remember the</p> <p>5 details of anything specific like that.</p> <p>6 It wasn't – it wasn't a</p> <p>7 contentious, nor should it have been a</p> <p>8 contentious negotiation.</p> <p>9 Q. How long did – do you recall how</p> <p>10 long each of the conversations lasted that led</p> <p>11 to the entry of each of the three agreements?</p> <p>12 A. I remember the first one being</p> <p>13 longer than the second two, and then I remember</p> <p>14 it being spread out periods of time. So I</p> <p>15 can't – I can't – I can't put an exact</p> <p>16 estimate on it.</p> <p>17 Q. Okay. I'm going to shift gears.</p> <p>18 MR. MORRIS: We can take that down</p> <p>19 now, please.</p> <p>20 MS. CANTY: (Complies with request.)</p> <p>21 BY MR. MORRIS:</p> <p>22 Q. Do you know of any written agreement</p> <p>23 pursuant to which HCRE provided services to</p> <p>24 Highland at any time?</p> <p>25 MS. DEITSCH-PEREZ: Object to the</p>

<p>Page 86</p> <p>1 JAMES DONDERO</p> <p>2 form. Asked and answered.</p> <p>3 THE WITNESS: HCRE provided</p> <p>4 preferred services to. Well, the</p> <p>5 participants there in HCRE are, my –</p> <p>6 myself and McGraner. And, you know, we</p> <p>7 both provided significant other services to</p> <p>8 Highland.</p> <p>9 BY MR. MORRIS:</p> <p>10 Q. Okay. Is that in writing? Is there</p> <p>11 a written agreement?</p> <p>12 That was my question.</p> <p>13 Is there a written agreement</p> <p>14 pursuant to which HCRE ever provided services</p> <p>15 to Highland?</p> <p>16 A. I don't believe so.</p> <p>17 Q. Did HCRE ever provide services to</p> <p>18 Highland?</p> <p>19 A. I would incorporate my last two</p> <p>20 answers. Not under a written agreement, but I</p> <p>21 believe myself and McGraner provided a lot of</p> <p>22 services.</p> <p>23 Q. And what services did you and Mr.</p> <p>24 McGraner provide to Highland?</p> <p>25 A. I'd say anything real estate related</p>	<p>Page 87</p> <p>1 JAMES DONDERO</p> <p>2 on the Highland platform McGraner would have</p> <p>3 input into.</p> <p>4 And then I think my – my portfolio</p> <p>5 management, leadership role in Highland over</p> <p>6 time is well documented.</p> <p>7 Q. And how did you know if you were</p> <p>8 providing services in your capacity as the</p> <p>9 president of Highland or in your capacity as an</p> <p>10 officer or owner of the HCRE at the time you</p> <p>11 provided the services?</p> <p>12 A. Never – never really thought about</p> <p>13 parsing it that way.</p> <p>14 Q. I appreciate that.</p> <p>15 Do you know whether Highland Capital</p> <p>16 Management Services ever provided services to</p> <p>17 Highland?</p> <p>18 A. Yeah.</p> <p>19 MS. DEITSCH-PEREZ: Object to the</p> <p>20 form. Asked and answered.</p> <p>21 THE WITNESS: Yeah. I would – not</p> <p>22 in writing. I believe the services owners</p> <p>23 isn't myself and McGraner. I think it was</p> <p>24 myself and Okada.</p> <p>25 And I would say our portfolio and</p>
<p>Page 88</p> <p>1 JAMES DONDERO</p> <p>2 leadership contributions to Highland are</p> <p>3 well documented.</p> <p>4 BY MR. MORRIS:</p> <p>5 Q. And my question didn't have anything</p> <p>6 to do with any particular person. It's just</p> <p>7 simply whether Highland Capital Management</p> <p>8 Services ever provided any services to Highland</p> <p>9 Capital Management, L.P.</p> <p>10 MS. DEITSCH-PEREZ: Object to the</p> <p>11 form.</p> <p>12 THE WITNESS: The entities that</p> <p>13 you're describing or you're asking</p> <p>14 questions about don't have employees'</p> <p>15 services in HCRE. They have ownership</p> <p>16 individuals that I've described.</p> <p>17 So I've tried the best I can to</p> <p>18 answer your question and what the ownership</p> <p>19 may have done for Highland.</p> <p>20 But since there's no employee base</p> <p>21 at either of those two companies, those</p> <p>22 companies could not have directly provided</p> <p>23 service to Highland other than, the last</p> <p>24 thing I would bring up is the track-record</p> <p>25 concept, you know, in terms of the</p>	<p>Page 89</p> <p>1 JAMES DONDERO</p> <p>2 performance of whatever assets are in some</p> <p>3 of those start-up entities ends up being a</p> <p>4 useful track record that then Highland can</p> <p>5 market.</p> <p>6 BY MR. MORRIS:</p> <p>7 Q. Okay. How about NexPoint, did</p> <p>8 NexPoint ever provide services to Highland</p> <p>9 Capital Management, L.P.?</p> <p>10 A. Yes. The real estate – yes. I</p> <p>11 mean, can I just say yes or –</p> <p>12 Q. You could. That would be really</p> <p>13 helpful.</p> <p>14 A. Okay. There we go.</p> <p>15 Q. Can you describe the circumstances</p> <p>16 for me?</p> <p>17 MS. DEITSCH-PEREZ: Finally, some</p> <p>18 accord between the witness and the</p> <p>19 questioner.</p> <p>20 BY MR. MORRIS:</p> <p>21 Q. Can you describe the services for</p> <p>22 me?</p> <p>23 A. NexPoint has a couple of attorneys</p> <p>24 that are real estate experts. We have a lot of</p> <p>25 different attorneys, or we did at Highland.</p>

<p>Page 90</p> <p>1 JAMES DONDERO</p> <p>2 But prior to the bankruptcy, none of the</p> <p>3 Highland attorneys were experienced in real</p> <p>4 estate.</p> <p>5 So anything that required</p> <p>6 transaction help on the Highland platform</p> <p>7 regarding real estate, the NexPoint real estate</p> <p>8 attorneys would help with.</p> <p>9 Q. Okay. Anything else?</p> <p>10 A. I'm sure there are others. That's</p> <p>11 all I can think of off the top of my head. I</p> <p>12 just wanted to give you an example.</p> <p>13 Q. I appreciate that.</p> <p>14 You're aware that Highland has sued</p> <p>15 HCMFA to collect on two notes that were signed</p> <p>16 by Frank Waterhouse in 2019 in the aggregate</p> <p>17 amount of \$7.4 million; is that right?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. And we actually went through</p> <p>20 this the other day, so I don't want to belabor</p> <p>21 it if I don't have.</p> <p>22 But do you recall that we saw the</p> <p>23 incumbency certificate which identified</p> <p>24 Mr. Waterhouse as the treasurer of HCMFA as of</p> <p>25 April 2019?</p>	<p>Page 91</p> <p>1 JAMES DONDERO</p> <p>2 A. Yes.</p> <p>3 Q. Okay. And do you recall that you</p> <p>4 signed that incumbency certify in your capacity</p> <p>5 as president of HCMFA?</p> <p>6 MS. DEITSCH-PEREZ: Object to the</p> <p>7 form.</p> <p>8 THE WITNESS: Yes.</p> <p>9 BY MR. MORRIS:</p> <p>10 Q. I want to talk about the first of</p> <p>11 the two Notes, the \$2.4 million Note.</p> <p>12 Do you recall that in early May</p> <p>13 2019, Highland transferred \$2.4 million to</p> <p>14 HCMFA?</p> <p>15 A. I don't remember a lot of specifics,</p> <p>16 but I know there were two Notes as you're</p> <p>17 describing.</p> <p>18 Q. Okay. And there was -- and one of</p> <p>19 them -- did you authorize the \$2.4-million</p> <p>20 payment?</p> <p>21 A. Yes.</p> <p>22 Q. And why did you authorize Highland</p> <p>23 to transfer \$2.4 million to HCMFA in early May</p> <p>24 2019?</p> <p>25 A. My answer's the same for both --</p>
<p>Page 92</p> <p>1 JAMES DONDERO</p> <p>2 both Notes. Essentially, it's regarding the</p> <p>3 terrace start issue that we had with the</p> <p>4 Fort Worth SEC.</p> <p>5 Q. Did you give anyone instructions</p> <p>6 concerning the transfer of the \$2.4 million?</p> <p>7 A. I instructed them to make the</p> <p>8 transfer, or I was involved in the -- involved</p> <p>9 in approving the transfer.</p> <p>10 Q. And who did you instruct to make the</p> <p>11 transfer of \$2.4 million?</p> <p>12 A. Yeah. It would have been Frank.</p> <p>13 Q. Do you have a recollection of</p> <p>14 instructing Frank to transfer \$2.4 million?</p> <p>15 A. Yeah. Generally, yes.</p> <p>16 Q. Do you have a recollection of what</p> <p>17 instructions you gave him?</p> <p>18 A. It was well-known. It was a very</p> <p>19 disruptive -- the whole thing was very</p> <p>20 disruptive at Highland and HCMFA. Everybody</p> <p>21 was aware of it. The settlement, the</p> <p>22 negotiations around the settlement, the</p> <p>23 give-and-take, the amounts changed over time.</p> <p>24 Everybody was aware of it in senior</p> <p>25 management, including myself. And putting the</p>	<p>Page 93</p> <p>1 JAMES DONDERO</p> <p>2 money into HCMFA to settle it was something I</p> <p>3 was aware of and authorized and a critical</p> <p>4 piece of putting that issue to bed.</p> <p>5 Q. Okay. I'm just asking you if you</p> <p>6 recall what instructions you gave to</p> <p>7 Mr. Waterhouse concerning the transfer if you</p> <p>8 recall?</p> <p>9 A. No. I mean, like I said, I</p> <p>10 authorized the movement of the money.</p> <p>11 Q. Okay. Were you aware at that time</p> <p>12 that the transfer of the \$2.4 million from</p> <p>13 Highland to HCMFA was booked as a loan on both</p> <p>14 Highland and HCMFA's books and records?</p> <p>15 A. I was not aware at the time.</p> <p>16 Q. Okay.</p> <p>17 MR. MORRIS: Can we put up</p> <p>18 Exhibit 53 please.</p> <p>19 THE VIDEOGRAPHER: Counsel, I will</p> <p>20 need a media break in about five minutes.</p> <p>21 MR. MORRIS: Thank you very much.</p> <p>22 Why don't we take that right now before I</p> <p>23 begin my examination on this document. How</p> <p>24 long do you need?</p> <p>25 THE VIDEOGRAPHER: It will just be a</p>

<p>Page 94</p> <p>1 JAMES DONDERO</p> <p>2 minute, but this is the end of Media Number</p> <p>3 1.</p> <p>4 MR. MORRIS: Okay.</p> <p>5 THE VIDEOGRAPHER: We are off the</p> <p>6 record at 3:21.</p> <p>7 MR. MORRIS: We are off the record,</p> <p>8 but don't go anywhere.</p> <p>9 MS. DEITSCH-PEREZ: What?</p> <p>10 MR. MORRIS: We're not taking a</p> <p>11 break.</p> <p>12 THE VIDEOGRAPHER: Yep. This will</p> <p>13 just take a minute. Please stand by.</p> <p>14 MR. MORRIS: Thank you.</p> <p>15 THE VIDEOGRAPHER: All right.</p> <p>16 Suzanne, are you good to go?</p> <p>17 THE COURT REPORTER: I'm good.</p> <p>18 THE VIDEOGRAPHER: This is the</p> <p>19 beginning of Media Number 2, Volume II</p> <p>20 [sic] in the deposition of James Dondero.</p> <p>21 We are back on the record at 3:22.</p> <p>22 MR. MORRIS: All right. Can we</p> <p>23 please put up Exhibit 53.</p> <p>24 MS. CANTY: Yeah. Just one second.</p> <p>25 My computer went haywire. Give me one</p>	<p>Page 95</p> <p>1 JAMES DONDERO</p> <p>2 minute.</p> <p>3 (Whereupon, Exhibit 53, E-mail</p> <p>4 correspondence, Bates stamped D-CNL003768</p> <p>5 through D-CNL003770, marked for</p> <p>6 identification, as of this date.)</p> <p>7 BY MR. MORRIS:</p> <p>8 Q. Okay. So Mr. Dondero, do you see</p> <p>9 what's on the screen here?</p> <p>10 Mr. Dondero?</p> <p>11 MR. MORRIS: Deborah?</p> <p>12 Apparently Mr. Dondero has left the</p> <p>13 seat.</p> <p>14 THE VIDEOGRAPHER: Would you like to</p> <p>15 go off record?</p> <p>16 MR. MORRIS: No.</p> <p>17 THE VIDEOGRAPHER: Okay. We'll stay</p> <p>18 on the record.</p> <p>19 MR. MORRIS: The video is still</p> <p>20 rolling, right, sir?</p> <p>21 THE VIDEOGRAPHER: Yes, it is.</p> <p>22 MR. MORRIS: Thank you.</p> <p>23 Hi, Michael. If you're – if you're</p> <p>24 able, can you reach out to your partner?</p> <p>25 MR. AIGEN: I had texted her. I</p>
<p>Page 96</p> <p>1 JAMES DONDERO</p> <p>2 will try to call her, too; but I did text</p> <p>3 her a couple of minutes ago. I will try to</p> <p>4 reach out again. Hold on.</p> <p>5 MS. DEITSCH-PEREZ: I'm back. I'm</p> <p>6 lucky in that the ladies room is directly</p> <p>7 across from the conference room.</p> <p>8 Mr. Dondero's down at the other end</p> <p>9 of the floor, so he will be back shortly.</p> <p>10 And I just saw your note, John. The</p> <p>11 – the videographer said he needed a break;</p> <p>12 and you said, okay, then let's take our</p> <p>13 break now. So we took a restroom break.</p> <p>14 MR. MORRIS: I think everybody on</p> <p>15 the phone – and there's a transcript of it</p> <p>16 – knows that I specifically said, how long</p> <p>17 do you need. He said one minute, and I</p> <p>18 said don't go anywhere.</p> <p>19 This is your time, not mine.</p> <p>20 MS. DEITSCH-PEREZ: Prior to that,</p> <p>21 you said, let's take the break now.</p> <p>22 MR. MORRIS: Yeah, to allow him to</p> <p>23 change the tape. I'm not going to question</p> <p>24 anybody on the call, but I'm 100 percent</p> <p>25 certain that they would all tell you – and</p>	<p>Page 97</p> <p>1 JAMES DONDERO</p> <p>2 the record will reflect, I specifically</p> <p>3 said do not leave.</p> <p>4 MS. DEITSCH-PEREZ: Okay.</p> <p>5 Mr. Dondero is back.</p> <p>6 You have to turn – turn the video</p> <p>7 on.</p> <p>8 THE WITNESS: I'm back.</p> <p>9 BY MR. MORRIS:</p> <p>10 Q. All right. Do you see on the screen</p> <p>11 there's a document that's been marked as</p> <p>12 Exhibit 53?</p> <p>13 A. Yup.</p> <p>14 Q. Do you see there's an e-mail string</p> <p>15 dated May 2, 2019?</p> <p>16 A. Yes.</p> <p>17 Q. And do you see that Mr. Waterhouse</p> <p>18 has – if you look at the second to the top,</p> <p>19 Mr. Waterhouse's e-mail is forwarding a</p> <p>20 spreadsheet to David Klos and Kristin Hendrix</p> <p>21 that he described as, quote, "The support for</p> <p>22 the payment to GAF by HCMFA?"</p> <p>23 A. Yes.</p> <p>24 Q. What's GAF?</p> <p>25 A. That's the fund itself that owned</p>

<p>Page 98</p> <p>1 JAMES DONDERO</p> <p>2 the TerreStar investment. The SEC wanted, I</p> <p>3 believe, some payment to go to them; but they</p> <p>4 all, meaning the SEC, and the SEC wanted some</p> <p>5 payment to go to the fund itself for the</p> <p>6 benefit of the investors.</p> <p>7 Q. Okay.</p> <p>8 MR. MORRIS: Can we can to the chart</p> <p>9 that's attached.</p> <p>10 MS. CANTY: (Complies with request.)</p> <p>11 BY MR. MORRIS:</p> <p>12 Q. Have you ever seen this chart</p> <p>13 before, sir?</p> <p>14 A. I don't believe so specifically, but</p> <p>15 I understand what it is.</p> <p>16 Q. And is it your understanding, based</p> <p>17 on this chart, that the loss to the fund was</p> <p>18 \$6,068,851?</p> <p>19 MS. DEITSCH-PEREZ: Object to the</p> <p>20 form.</p> <p>21 THE WITNESS: Yes.</p> <p>22 BY MR. MORRIS:</p> <p>23 Q. And there's -- there's a column</p> <p>24 there that's lost to fund.</p> <p>25 Do you see that?</p>	<p>Page 99</p> <p>1 JAMES DONDERO</p> <p>2 A. Yes.</p> <p>3 Q. And is it -- is it consistent with</p> <p>4 your recollection that the estimated loss of</p> <p>5 the fund or to the fund was approximately</p> <p>6 \$6 million?</p> <p>7 A. Yes. There is approximately --</p> <p>8 there's some other small numbers moving around,</p> <p>9 but yes.</p> <p>10 Q. Okay. And do you recall that HCMFA</p> <p>11 informed the SEC that HCMFA would make the fund</p> <p>12 whole by paying it an amount of money equal to</p> <p>13 the loss?</p> <p>14 A. Yes.</p> <p>15 Q. And, in fact, HCMFA paid the fund</p> <p>16 approximately \$6 million in connection with the</p> <p>17 losses sustained as a result of the NAV error,</p> <p>18 correct?</p> <p>19 A. I don't know details like that.</p> <p>20 Q. So you're not -- you're not aware of</p> <p>21 the fact that HCMFA paid to the fund</p> <p>22 approximately \$6 million in May of 2019?</p> <p>23 A. Approximately six or approximately</p> <p>24 seven. I -- I don't know. Whatever the</p> <p>25 agreement was with the SEC to be paid to them</p>
<p>Page 100</p> <p>1 JAMES DONDERO</p> <p>2 or to the fund or whatever, I -- I have all</p> <p>3 faith and confidence we complied with; but I</p> <p>4 don't -- I don't know the exact numbers. I'm</p> <p>5 not aware of the exact numbers.</p> <p>6 Q. Do you understand that this analysis</p> <p>7 shows how HCMFA was going to finance the</p> <p>8 payment to the fund as a result of the NAV</p> <p>9 error?</p> <p>10 MS. DEITSCH-PEREZ: Object to the</p> <p>11 form.</p> <p>12 THE WITNESS: I'm sorry. Could you</p> <p>13 repeat that question again?</p> <p>14 BY MR. MORRIS:</p> <p>15 Q. Sure. Do you understand that</p> <p>16 this -- that this chart here sets forth the</p> <p>17 manner in which HCMFA is going to fund the</p> <p>18 payment that it was making to GAF on account of</p> <p>19 the NAV error?</p> <p>20 A. I would call it more of a</p> <p>21 calculation on where the amounts are coming</p> <p>22 from. It doesn't appear to me that this is a</p> <p>23 funding statement.</p> <p>24 Q. Okay. I appreciate that.</p> <p>25 So -- so your interpretation of this</p>	<p>Page 101</p> <p>1 JAMES DONDERO</p> <p>2 is that this shows the sources of money that</p> <p>3 were going to be used to make the payment; is</p> <p>4 that fair?</p> <p>5 MS. DEITSCH-PEREZ: Objection to the</p> <p>6 form.</p> <p>7 THE WITNESS: Yeah. I think it's a</p> <p>8 reconciliation between the insurance, some</p> <p>9 forgiveness of fees, and then additional</p> <p>10 monies that are necessary.</p> <p>11 BY MR. MORRIS:</p> <p>12 Q. Okay. And --</p> <p>13 A. Yeah. Go ahead.</p> <p>14 Q. Did HCMFA file an insurance claim in</p> <p>15 connection with the NAV error?</p> <p>16 A. I believe they did get -- I believe</p> <p>17 they did, and I believe they did get paid some</p> <p>18 insurance.</p> <p>19 Q. And -- and if we look at the totals</p> <p>20 column in the right, did HCMFA receive, to the</p> <p>21 best of your recollection, approximately</p> <p>22 \$5 million from insurance?</p> <p>23 A. Yes. I think we should work -- I</p> <p>24 think we should work from that column --</p> <p>25 Q. Okay. So let's --</p>

<p>Page 102</p> <p>1 JAMES DONDERO</p> <p>2 A. -- versus the other column, yeah.</p> <p>3 Q. I apologize, Mr. Dondero.</p> <p>4 So if we look at the last column,</p> <p>5 the total, does that comport with your</p> <p>6 recollection that HCMFA paid GAF approximately</p> <p>7 \$7.44 million in May of 2019 on account of the</p> <p>8 NAV error?</p> <p>9 A. I think it's more than that, and I</p> <p>10 think it's also the 375 below that.</p> <p>11 Q. Okay.</p> <p>12 A. And then I -- yeah, definitely those</p> <p>13 two numbers in aggregate. I don't know if it's</p> <p>14 any others.</p> <p>15 Q. Okay. And did, to the best of your</p> <p>16 recollection, HCMFA make an insurance claim on</p> <p>17 which it received almost \$5 million as a source</p> <p>18 of funding for the payment that was due to GAF?</p> <p>19 A. Yes.</p> <p>20 Q. Are you familiar with that insurance</p> <p>21 claim?</p> <p>22 A. No.</p> <p>23 Q. Do you know if the insurance claim</p> <p>24 made any mention of Highland?</p> <p>25 A. I have no idea. I have no idea.</p>	<p>Page 103</p> <p>1 JAMES DONDERO</p> <p>2 Q. Okay. So as a -- as a matter of</p> <p>3 rough math, would you agree with me that the</p> <p>4 insurance procedures funded approximately</p> <p>5 5 million of the \$7.8 million that was the</p> <p>6 total loss?</p> <p>7 MS. DEITSCH-PEREZ: Object to the</p> <p>8 form.</p> <p>9 THE WITNESS: This was the amount</p> <p>10 due to the investors. I -- I -- my rough</p> <p>11 recollection is there was another amount</p> <p>12 that was due the SEC, but I don't remember</p> <p>13 specifically.</p> <p>14 BY MR. MORRIS:</p> <p>15 Q. Okay. And do you see in the middle</p> <p>16 of the page, there's a total additional payment</p> <p>17 from advisor of approximately \$2.4 million?</p> <p>18 A. Yes.</p> <p>19 Q. And is it your understanding that</p> <p>20 that is the amount that HCMFA had to come out</p> <p>21 of pocket in order to fully fund the GAF</p> <p>22 payment?</p> <p>23 A. Yes, but it's clear to me also that</p> <p>24 there's a forgiveness of management fees, also.</p> <p>25 Q. Okay. But is two point -- but is</p>
<p>Page 104</p> <p>1 JAMES DONDERO</p> <p>2 \$2.4 million the amount of money that HCMFA</p> <p>3 needed in order to fully fund the payment to</p> <p>4 GAF?</p> <p>5 A. And I don't want to mince small</p> <p>6 numbers; but to the extent that they gave up</p> <p>7 their management fees also, like that 1939 or</p> <p>8 the 39 above that -- and I don't know what that</p> <p>9 47 is above that -- those are management fees</p> <p>10 that would have paid salaries and expenses at</p> <p>11 HCMFA also.</p> <p>12 So to the extent they gave up those</p> <p>13 items as part of the settlement, then HCMFA</p> <p>14 would have needed more money than even the 2.4</p> <p>15 that came from Highland.</p> <p>16 Q. Do you know if HCMFA ever informed</p> <p>17 the SEC that Highland was responsible for the</p> <p>18 NAV error?</p> <p>19 A. I -- I don't know. We wouldn't have</p> <p>20 hidden it if they would have asked. My</p> <p>21 experience with the SEC is they identify the</p> <p>22 advisor; and who the advisor picks for vendors</p> <p>23 the advisor's responsible for.</p> <p>24 MR. MORRIS: I move to strike</p> <p>25 everything after "I don't know."</p>	<p>Page 105</p> <p>1 JAMES DONDERO</p> <p>2 BY MR. MORRIS:</p> <p>3 Q. Did you ever direct anyone to inform</p> <p>4 the SEC that Highland was responsible for the</p> <p>5 NAV error?</p> <p>6 A. No, not that I recall.</p> <p>7 Q. Do you know if anybody acting on</p> <p>8 behalf of HCMFA ever informed the SEC that</p> <p>9 Highland was responsible for the NAV error?</p> <p>10 A. I don't know.</p> <p>11 Q. Do you know if HCMFA ever informed</p> <p>12 GAF that Highland was responsible for the NAV</p> <p>13 error?</p> <p>14 A. Yes.</p> <p>15 Q. And is that reflected in writing</p> <p>16 anywhere?</p> <p>17 A. Yes. Numerous places.</p> <p>18 Q. And what writing would that be</p> <p>19 reflected in?</p> <p>20 A. The board minutes. There were</p> <p>21 conversations every board meeting for over a</p> <p>22 year. The retail board represents GAF. They</p> <p>23 were well aware of the subadvisory agreements,</p> <p>24 and they were well aware that all the staff</p> <p>25 regarding valuation were housed at Highland;</p>

<p>Page 106</p> <p>1 JAMES DONDERO</p> <p>2 all the valuation activities were performed by</p> <p>3 Highland. And GAF and HCMFA relied on</p> <p>4 Highland, and it was a material part of board</p> <p>5 conversations for over a year.</p> <p>6 MR. MORRIS: Okay. I move to</p> <p>7 strike.</p> <p>8 BY MR. MORRIS:</p> <p>9 Q. I'm asking you just about writings,</p> <p>10 sir.</p> <p>11 Can you identify –</p> <p>12 A. No, no, no. I'm not – I'm not</p> <p>13 going to – I'm not going to allow that strike,</p> <p>14 or I'm not answering anymore questions.</p> <p>15 Q. Well, the judge will be the</p> <p>16 determiner of that. So I'd like you to answer</p> <p>17 my question.</p> <p>18 Is there any – I don't want to know</p> <p>19 about board meetings.</p> <p>20 Is there anything in writing that</p> <p>21 HCMFA provided to GAF that specifically stated</p> <p>22 that Highland and not HCMFA was responsible for</p> <p>23 the NAV error?</p> <p>24 MS. DEITSCH-PEREZ: Asked and</p> <p>25 answered.</p>	<p>Page 107</p> <p>1 JAMES DONDERO</p> <p>2 THE WITNESS: Yes. Numerous board</p> <p>3 minutes.</p> <p>4 BY MR. MORRIS:</p> <p>5 Q. Okay. And have those board minutes</p> <p>6 been produced in this litigation?</p> <p>7 A. I don't know.</p> <p>8 Q. Okay.</p> <p>9 MR. MORRIS: Let's go to the next</p> <p>10 exhibit, 54.</p> <p>11 MS. CANTY: (Complies with request.)</p> <p>12 (Whereupon, Exhibit 54, E-mail</p> <p>13 correspondence, Bates stamped D-CNL003777</p> <p>14 through D-CNL003779, marked for</p> <p>15 identification, as of this date.)</p> <p>16 BY MR. MORRIS:</p> <p>17 Q. Do you see that on the same day, at</p> <p>18 the bottom, Mr. Klos sent an e-mail to the</p> <p>19 Corporate Accounting Group?</p> <p>20 A. Yes.</p> <p>21 Q. And do you see that he instructed</p> <p>22 the Corporate Accounting Group to transfer</p> <p>23 \$2.4 million from HCMFA to HCMFA?</p> <p>24 A. Yes.</p> <p>25 Q. And do you see that he specifically</p>
<p>Page 108</p> <p>1 JAMES DONDERO</p> <p>2 informed the Corporate Accounting Group that</p> <p>3 this transaction was a, quote, "New inter</p> <p>4 co-loan?</p> <p>5 A. Yes.</p> <p>6 Q. Do you see that he asked</p> <p>7 Christian – Kristin or Hayley to prepare a</p> <p>8 Promissory Note for discussion?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. Are you aware in May 2019,</p> <p>11 Frank Waterhouse was included in the e-mail</p> <p>12 string identified as Corporate Accounting?</p> <p>13 A. I do not have that awareness.</p> <p>14 Q. Okay. Do you see at the top</p> <p>15 Ms. Hendrix – Ms. Hendrix's response to</p> <p>16 Mr. Klos's e-mail and attaches a copy of a</p> <p>17 Promissory Note?</p> <p>18 A. Yes.</p> <p>19 Q. Okay.</p> <p>20 MR. MORRIS: Can we just go to the</p> <p>21 attachment, please.</p> <p>22 MS. CANTY: (Complies with request.)</p> <p>23 BY MR. MORRIS:</p> <p>24 Q. Do you see that that is a Promissory</p> <p>25 Note dated May 2, 2019, in the amount of</p>	<p>Page 109</p> <p>1 JAMES DONDERO</p> <p>2 \$2.4 million that where the maker is Highland</p> <p>3 Capital Management Fund Advisors, L.P.?</p> <p>4 A. Yeah.</p> <p>5 Q. Have you ever seen this before?</p> <p>6 A. I think in our last deposition.</p> <p>7 Q. Okay. Do you recall when you saw it</p> <p>8 for the first time?</p> <p>9 A. Our last deposition.</p> <p>10 Q. Do you recall when you learned about</p> <p>11 the existence of this document for the first</p> <p>12 time?</p> <p>13 A. I believe somehow regarding the</p> <p>14 litigation.</p> <p>15 Q. Okay. So you have no knowledge of</p> <p>16 this Promissory Note until after the litigation</p> <p>17 was commenced; do I have that right?</p> <p>18 A. Correct.</p> <p>19 Q. So you're not aware of Highland</p> <p>20 having made a demand for payment on this</p> <p>21 Promissory Note in December of 2020?</p> <p>22 A. Not that I recall.</p> <p>23 Q. Okay. Putting aside the question of</p> <p>24 the Promissory Note, do you recall when you</p> <p>25 first learned that the \$2.4 million that you</p>

<p>Page 110</p> <p>1 JAMES DONDERO</p> <p>2 instructed to be paid to HCMFA by Highland in</p> <p>3 May of 2019, do you recall when you first</p> <p>4 learned that that was booked as a loan?</p> <p>5 A. I believe just generally as part of</p> <p>6 this litigation, not before then.</p> <p>7 Q. Are you aware that the Corporate</p> <p>8 Accounting Group created a daily list of wire</p> <p>9 transfers that were being made on behalf of</p> <p>10 Highland and its affiliates?</p> <p>11 A. Not – no, not specifically.</p> <p>12 Q. Okay. So since you did not know</p> <p>13 that the \$2.4 million transfer had been booked</p> <p>14 as a loan, is it fair to say that you never</p> <p>15 told anybody prior to the commencement of this</p> <p>16 litigation that the transaction should not have</p> <p>17 been booked as a loan?</p> <p>18 A. I had no conversations either way</p> <p>19 prior to this litigation regarding the booking</p> <p>20 of the 2.4 million.</p> <p>21 Q. Did you ever take any steps to try</p> <p>22 to determine how Highland and HCMFA accounted</p> <p>23 for the \$2.4 million that you instructed to be</p> <p>24 transferred from Highland to HCMFA in early</p> <p>25 May 2019?</p>	<p>Page 111</p> <p>1 JAMES DONDERO</p> <p>2 A. No.</p> <p>3 Q. Did you rely on Mr. Waterhouse to</p> <p>4 oversee that?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. And you did so because he</p> <p>7 held not only the CFO title at Highland, but he</p> <p>8 also held the treasurer title at HCMFA,</p> <p>9 correct?</p> <p>10 MS. DEITSCH-PEREZ: Object to the</p> <p>11 form.</p> <p>12 THE WITNESS: I relied on him</p> <p>13 because generally the accounting function</p> <p>14 across the organization reported up through</p> <p>15 him.</p> <p>16 BY MR. MORRIS:</p> <p>17 Q. Let's talk about the \$5 million</p> <p>18 Note.</p> <p>19 Do you recall that in early</p> <p>20 May 2019, in fact, the next day, May 3rd,</p> <p>21 Highland transferred \$5 million to HCMFA?</p> <p>22 A. I – I don't recall specifically.</p> <p>23 Q. Do you recall authorizing the</p> <p>24 transfer of \$5 million from Highland to HCMFA</p> <p>25 in early May 2019?</p>
<p>Page 112</p> <p>1 JAMES DONDERO</p> <p>2 A. Yes, generally.</p> <p>3 Q. Okay. Why did you authorize</p> <p>4 Highland to transfer \$5 million to HCMFA in</p> <p>5 early 2019?</p> <p>6 A. It was part of the overall</p> <p>7 resolution of the TerreStar situation.</p> <p>8 Q. Do you recall that HCMFA paid</p> <p>9 something called a consent fee equal to</p> <p>10 \$5 million in early May 2019?</p> <p>11 A. Well, like I said, I don't recall</p> <p>12 the exact amounts or the exact amounts net of</p> <p>13 insurance; but my recollection it was to</p> <p>14 resolve that.</p> <p>15 Q. Do you know – do you know – did –</p> <p>16 let's real simple.</p> <p>17 Did – did HCMFA pay a consent fee</p> <p>18 in May of 2019?</p> <p>19 A. I – I don't recall.</p> <p>20 Q. Do you know what a consent fee is?</p> <p>21 A. Yes.</p> <p>22 Q. What's a consent fee?</p> <p>23 A. It's a – a fee to encourage</p> <p>24 shareholder vote on something or shareholder</p> <p>25 restitution on something, typically.</p>	<p>Page 113</p> <p>1 JAMES DONDERO</p> <p>2 Q. And did – do you recall if HCMFA</p> <p>3 ever paid a consent fee in the year 2019?</p> <p>4 A. I don't recall.</p> <p>5 Q. Would Highland be responsible at all</p> <p>6 if HCMFA paid a consent fee?</p> <p>7 MS. DEITSCH-PEREZ: Object to the</p> <p>8 form.</p> <p>9 THE WITNESS: It could be. I</p> <p>10 don't – I don't know or remember the</p> <p>11 circumstances.</p> <p>12 BY MR. MORRIS:</p> <p>13 Q. Is the payment of a consent fee a</p> <p>14 voluntary decision by – by HCMFA? Is that</p> <p>15 something that –</p> <p>16 MS. DEITSCH-PEREZ: Object to the</p> <p>17 form.</p> <p>18 MR. MORRIS: Is that – withdrawn.</p> <p>19 That's fair.</p> <p>20 BY MR. MORRIS:</p> <p>21 Q. Is the payment of a consent fee</p> <p>22 required, or is that something that one can</p> <p>23 exercise discretion in whether or not to make?</p> <p>24 MS. DEITSCH-PEREZ: Object to the</p> <p>25 form.</p>

<p>Page 114</p> <p>1 JAMES DONDERO</p> <p>2 THE WITNESS: My answer would be it</p> <p>3 depends.</p> <p>4 BY MR. MORRIS:</p> <p>5 Q. Do you recall whether Highland –</p> <p>6 withdrawn.</p> <p>7 Do you recall whether HCMFA was</p> <p>8 required to make – to make a – to pay a</p> <p>9 consent fee at any time in 2019?</p> <p>10 A. I don't recall.</p> <p>11 Q. Do you recall ever believing that</p> <p>12 HCMFA paid a consent fee because of something</p> <p>13 that – because of a mistake that Highland</p> <p>14 made?</p> <p>15 A. It could be. I don't know.</p> <p>16 Q. I'm just asking if you had a</p> <p>17 recollection?</p> <p>18 A. I don't have a recollection.</p> <p>19 Q. Okay.</p> <p>20 MR. MORRIS: To the videographer, I</p> <p>21 think Mr. Dondero's screen has frozen.</p> <p>22 MS. DEITSCH-PEREZ: John, your</p> <p>23 screen is frozen, too.</p> <p>24 MR. MORRIS: I'm –</p> <p>25 MS. DEITSCH-PEREZ: I'm also – hang</p>	<p>Page 115</p> <p>1 JAMES DONDERO</p> <p>2 on. I've lost contact. Give me a minute.</p> <p>3 THE VIDEOGRAPHER: Okay. I'd like</p> <p>4 us to go off record. Do you agree?</p> <p>5 MR. MORRIS: Yeah, but please don't</p> <p>6 leave.</p> <p>7 MS. DEITSCH-PEREZ: Yes, we agree.</p> <p>8 THE VIDEOGRAPHER: All right. Off</p> <p>9 the record at 3:53.</p> <p>10 (Discussion held off the record.)</p> <p>11 THE VIDEOGRAPHER: We are back on</p> <p>12 the record at 3:54.</p> <p>13 BY MR. MORRIS:</p> <p>14 Q. Okay. Can we put up – no. Before</p> <p>15 we do that, Mr. Dondero, can you hear me?</p> <p>16 We can't hear you. Are you on mute?</p> <p>17 Are you on mute? Can you speak?</p> <p>18 You're yelling at me now. Stop</p> <p>19 yelling at me.</p> <p>20 THE VIDEOGRAPHER: I'm seeing is</p> <p>21 that Mr. Dondero is on mute.</p> <p>22 (Interruption.)</p> <p>23 THE VIDEOGRAPHER: We've got – do</p> <p>24 you want to go off video record?</p> <p>25 MR. MORRIS: No.</p>
<p>Page 116</p> <p>1 JAMES DONDERO</p> <p>2 Can somebody help Mr. Dondero and</p> <p>3 get his audio feed fixed?</p> <p>4 Thank you, sir.</p> <p>5 MS. DEITSCH-PEREZ: Does this make a</p> <p>6 difference?</p> <p>7 MR. MORRIS: It sure does.</p> <p>8 THE WITNESS: Hello, hello.</p> <p>9 THE MORRIS: Thank you. All right.</p> <p>10 Let's try and – let's try and finish this</p> <p>11 up.</p> <p>12 BY MR. MORRIS:</p> <p>13 Q. Are you ready, sir?</p> <p>14 A. Yes.</p> <p>15 Q. Were you aware in May 2019 that the</p> <p>16 \$5-million transfer from Highland to HCMFA was</p> <p>17 booked as a loan?</p> <p>18 A. No.</p> <p>19 MR. MORRIS: Can we put up</p> <p>20 Exhibit 56, please.</p> <p>21 MS. CANTY: (Complies with request.)</p> <p>22 (Whereupon, Exhibit 56, E-mail</p> <p>23 correspondence, Bates stamped D-CNL003763,</p> <p>24 marked for identification, as of this</p> <p>25 date.)</p>	<p>Page 117</p> <p>1 JAMES DONDERO</p> <p>2 BY MR. MORRIS:</p> <p>3 Q. All right. Do you see that this is</p> <p>4 an e-mail from Ms. Hendrix to the Corporate</p> <p>5 Accounting Group on May 3, 2019?</p> <p>6 Do you see that, sir?</p> <p>7 A. Yes.</p> <p>8 Q. And do you see that Ms. Hendrix told</p> <p>9 corporate accounting to transfer \$5 million as</p> <p>10 a, quote, "new loan," close quote?</p> <p>11 A. Yes.</p> <p>12 Q. And did you see Ms. Hendrix also</p> <p>13 said that she would, quote, "paper the loan,"</p> <p>14 close quote?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. You're aware that from time</p> <p>17 to time, members of the Corporate Accounting</p> <p>18 Group used a template for a Promissory Note</p> <p>19 that had been previously prepared by counsel,</p> <p>20 correct?</p> <p>21 MS. DEITSCH-PEREZ: Object to the</p> <p>22 form.</p> <p>23 THE WITNESS: I – yeah. I'm aware</p> <p>24 they have a loan template, yes.</p> <p>25</p>

<p>Page 118</p> <p>1 JAMES DONDERO</p> <p>2 BY MR. MORRIS:</p> <p>3 Q. Okay. Do you see there's a</p> <p>4 parenthetical in the first sentence that says,</p> <p>5 "(4.4M should be coming in from Jim soon)"?</p> <p>6 A. Yes.</p> <p>7 Q. Do you know what that refers to?</p> <p>8 A. My – my educated – boy. My</p> <p>9 educated speculation is that Highland didn't</p> <p>10 have enough cash, so I probably put four into</p> <p>11 Highland for Highland to send to HCMFA. That's</p> <p>12 my educated guess; but otherwise, I don't know</p> <p>13 specifically.</p> <p>14 Q. And do you recall that you had taken</p> <p>15 out a loan from Highland earlier in the year,</p> <p>16 and this payment was credited against the</p> <p>17 principal and interest then due on that Note?</p> <p>18 A. I don't have specific awareness.</p> <p>19 That would make sense.</p> <p>20 Q. Okay.</p> <p>21 A. Versus – versus creating a new loan</p> <p>22 or something.</p> <p>23 Q. Okay.</p> <p>24 MR. MORRIS: Let's go to Exhibit 57,</p> <p>25 please.</p>	<p>Page 119</p> <p>1 JAMES DONDERO</p> <p>2 MS. CANTY: (Complies with request.)</p> <p>3 (Whereupon, Exhibit 57, Promissory</p> <p>4 Note, Bates stamped D-CNL003764 through</p> <p>5 D-CNL003765, marked for identification, as</p> <p>6 of this date.)</p> <p>7 BY MR. MORRIS:</p> <p>8 Q. In fact, were you aware, sir, that</p> <p>9 in May 2019, you paid Highland exactly</p> <p>10 \$7.5 million?</p> <p>11 A. Not specifically, but it makes sense</p> <p>12 given the context we're discussing.</p> <p>13 Q. Okay. So the context that we're</p> <p>14 discussing was HCMFA needed \$7.5 million.</p> <p>15 Highland didn't have it. So that seven – you</p> <p>16 paid \$7.5 million to Highland, which was</p> <p>17 applied against your outstanding note. And</p> <p>18 then Highland transferred that money to HCMFA.</p> <p>19 Does that sound right to you?</p> <p>20 A. Generally, yes.</p> <p>21 Q. Okay. So now if we look at this</p> <p>22 note that's on the screen, do you see this is a</p> <p>23 Promissory Note for \$5 million dated May 3,</p> <p>24 2019?</p> <p>25 A. Yes.</p>
<p>Page 120</p> <p>1 JAMES DONDERO</p> <p>2 Q. And did you see this for the first</p> <p>3 time when I showed it to you late last week?</p> <p>4 A. Yes.</p> <p>5 Q. And did you learn about the loan</p> <p>6 from Highland to HCMFA for the first time after</p> <p>7 the litigation was commenced?</p> <p>8 A. That's the first time I remember.</p> <p>9 Q. And did you learn that Highland and</p> <p>10 HCMFA had booked the \$5-million transfer in May</p> <p>11 of 2019 as a loan for the first time after the</p> <p>12 litigation was commenced?</p> <p>13 A. That is my recollection.</p> <p>14 Q. Okay. We talked at your first</p> <p>15 deposition in May about Highland's audited</p> <p>16 financial statements.</p> <p>17 I don't know if you have a</p> <p>18 recollection of that. Do you?</p> <p>19 A. Just generally, yes.</p> <p>20 Q. Okay. I just want to focus on these</p> <p>21 two notes.</p> <p>22 For this portion of the deposition,</p> <p>23 we are questioning you in your individual</p> <p>24 capacity, and you're only focused on these two</p> <p>25 notes from HCMFA to Highland, okay?</p>	<p>Page 121</p> <p>1 JAMES DONDERO</p> <p>2 A. Okay.</p> <p>3 Q. Okay. When did you first learn that</p> <p>4 these notes were carried as assets on</p> <p>5 Highland's balance sheet?</p> <p>6 A. Like I said, I – my recollection is</p> <p>7 that as part of the bankruptcy and part of the</p> <p>8 litigation.</p> <p>9 Q. And so did you learn of it as part</p> <p>10 of the bankruptcy before the litigation was</p> <p>11 commenced, or did you learn that these notes</p> <p>12 were carried as assets after – only after the</p> <p>13 litigation was commenced?</p> <p>14 A. I believe only after. Especially,</p> <p>15 the specificity with regard to the notes, only</p> <p>16 after the litigation was commenced.</p> <p>17 Q. Okay. When did you learn for the</p> <p>18 first time that these notes were carried as</p> <p>19 liabilities on HCMFA's balance sheet?</p> <p>20 Withdrawn. No foundation.</p> <p>21 Are you aware that these notes have</p> <p>22 been carried as liabilities on HCMFA's balance</p> <p>23 sheet?</p> <p>24 A. I wasn't – I wasn't – I wasn't</p> <p>25 aware prior to the litigation.</p>

<p>Page 122</p> <p>1 JAMES DONDERO</p> <p>2 Q. Okay. Did you learn after the</p> <p>3 litigation that these notes had been carried as</p> <p>4 liabilities on HCMFA's balance sheets?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. Did you ever review</p> <p>7 Highland's audited financial statements?</p> <p>8 A. Not with any specificity.</p> <p>9 Q. Are you aware that Highland gave</p> <p>10 these Promissory Notes to PWC as part of the</p> <p>11 audit process?</p> <p>12 A. I would assume they did, but I don't</p> <p>13 have specific awareness.</p> <p>14 Q. Okay. And why do you assume that</p> <p>15 they did?</p> <p>16 A. As part of complete financials to</p> <p>17 the extent that they were made by Kristin or</p> <p>18 whoever, properly or improperly. Once they</p> <p>19 existed, they would have been part of a</p> <p>20 complete audit.</p> <p>21 Q. Are you aware that these two</p> <p>22 Promissory Notes were disclosed in Highland's</p> <p>23 audited financial statements for the period</p> <p>24 ending December 31, 2018, as subsequent events?</p> <p>25 A. No.</p>	<p>Page 123</p> <p>1 JAMES DONDERO</p> <p>2 Q. Okay.</p> <p>3 MR. MORRIS: Can we put up</p> <p>4 Exhibit 34, please.</p> <p>5 MS. CANTY: (Complies with request.)</p> <p>6 (Whereupon, Exhibit 34, Highland</p> <p>7 Capital Management, L.P., Consolidated</p> <p>8 Financial Statements and Supplemental</p> <p>9 Information, dated December 31, 2018, Bates</p> <p>10 stamped D-CNL000212 through D-CNL000257,</p> <p>11 marked for identification, as of this</p> <p>12 date.)</p> <p>13 BY MR. MORRIS:</p> <p>14 Q. And turn to – just if you can see,</p> <p>15 sir, the first page of this is the December 31,</p> <p>16 2018, financials.</p> <p>17 MR. MORRIS: And if we could go to</p> <p>18 the second or third page to see</p> <p>19 PricewaterhouseCoopers' signature.</p> <p>20 MS. CANTY: (Complies with request.)</p> <p>21 BY MR. MORRIS:</p> <p>22 Q. And do you see that</p> <p>23 PricewaterhouseCoopers signed off on the audit</p> <p>24 on June 3, 2019?</p> <p>25 A. Yes.</p>
<p>Page 124</p> <p>1 JAMES DONDERO</p> <p>2 Q. Okay.</p> <p>3 MR. MORRIS: Can we go to page 252</p> <p>4 of the document? It's got to be – let's</p> <p>5 see the Bates.</p> <p>6 MS. CANTY: (Complies with request.)</p> <p>7 MR. MORRIS: Yeah. Right there.</p> <p>8 Okay. Scroll just to the page before so we</p> <p>9 can see the heading.</p> <p>10 MS. CANTY: (Complies with request.)</p> <p>11 BY MR. MORRIS:</p> <p>12 Q. Okay. Do you see that this is the</p> <p>13 section of the audited financials entitled</p> <p>14 "Subsequent Events"?</p> <p>15 A. Yes.</p> <p>16 Q. And is it your understanding that</p> <p>17 the auditors include in subsequent events</p> <p>18 material transactions THAT occur between the</p> <p>19 end of the fiscal period in which had audit has</p> <p>20 been conducted and the date that the auditors</p> <p>21 sign off?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. So if you look at page 39,</p> <p>24 the next to the last paragraph, do you see, it</p> <p>25 says, quote, "Over the course of 2019 through</p>	<p>Page 125</p> <p>1 JAMES DONDERO</p> <p>2 the report date, HCMFA issued Promissory Notes</p> <p>3 to the partnership in the aggregate amount of</p> <p>4 \$7.4 million?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. And are you surprised to see</p> <p>7 that in the audit report?</p> <p>8 MS. DEITSCH-PEREZ: Object to the</p> <p>9 form.</p> <p>10 MR. MORRIS: Withdrawn.</p> <p>11 BY MR. MORRIS:</p> <p>12 Q. Have you seen – have you seen this</p> <p>13 entry in the audit report before this moment?</p> <p>14 A. No.</p> <p>15 Q. Okay. Are you aware that Highland</p> <p>16 employees were responsible for drafting the</p> <p>17 audit report?</p> <p>18 A. Responsible for drafting the audit</p> <p>19 report? I don't know if that's a fair</p> <p>20 statement.</p> <p>21 I think they provide the detail; but</p> <p>22 my understanding, the audit report is a work</p> <p>23 product of the accounting firm. That's my</p> <p>24 understanding.</p> <p>25 Q. Was there a group within Highland</p>

<p>Page 126</p> <p>1 JAMES DONDERO</p> <p>2 that was responsible for working with the</p> <p>3 auditors in the preparation of the audit</p> <p>4 reports?</p> <p>5 A. Yeah, yes.</p> <p>6 Q. Do you know what group that was?</p> <p>7 A. I believe there's a financial</p> <p>8 reporting group that reports to Frank that</p> <p>9 handles this interaction.</p> <p>10 Q. Are you familiar – are you aware of</p> <p>11 what role Mr. Waterhouse plays, if any, in</p> <p>12 connection with Highland's annual audit, at</p> <p>13 least during the time that you were serving as</p> <p>14 president?</p> <p>15 A. I think he – he coordinates – I</p> <p>16 think he has to sign off on many aspects of it,</p> <p>17 you know, as a C suite executive. So he's</p> <p>18 responsible for, you know, completeness,</p> <p>19 integrity, et cetera.</p> <p>20 And there's a certain amount of</p> <p>21 reliance that PWC puts on it; but my</p> <p>22 understanding is audits for the last bunch of</p> <p>23 years has been pretty much a hundred percent</p> <p>24 sampling and verification.</p> <p>25 Q. High- –</p>	<p>Page 127</p> <p>1 JAMES DONDERO</p> <p>2 A. – PWC.</p> <p>3 Q. I apologize, sir.</p> <p>4 Highland was the sole source of</p> <p>5 information that's contained in its audit</p> <p>6 reports, right, to the best of your knowledge?</p> <p>7 A. No. No. When I – the last thing I</p> <p>8 said a minute ago about I believe it was a</p> <p>9 hundred percent sampling and verification, I</p> <p>10 think the audit firm ties back to vendors,</p> <p>11 credit agreements, source documents, et cetera.</p> <p>12 Highland is not the only source of</p> <p>13 this information.</p> <p>14 Q. You were also responsible for the</p> <p>15 audit report; is that fair?</p> <p>16 A. Yes.</p> <p>17 Q. And that's because you signed a</p> <p>18 management representation letter, correct?</p> <p>19 A. Yes.</p> <p>20 Q. And do you have an understanding of</p> <p>21 what management a representation letter is?</p> <p>22 MS. DEITSCH-PEREZ: Object to the</p> <p>23 form. I think you've asked this in each</p> <p>24 day of the deposition.</p> <p>25 MR. MORRIS: Okay. Just trying to</p>
<p>Page 128</p> <p>1 JAMES DONDERO</p> <p>2 get some background here.</p> <p>3 THE WITNESS: Yes, I have a general</p> <p>4 understanding. They very from accounting</p> <p>5 firm to accounting firm, and they very</p> <p>6 depending upon the type of audit. But I</p> <p>7 have a general understanding of them, yes.</p> <p>8 BY MR. MORRIS:</p> <p>9 Q. Okay. And you're – are you aware</p> <p>10 that HCMFA had its financial statements audited</p> <p>11 by PWC as well?</p> <p>12 A. Yes.</p> <p>13 Q. Are you aware that HCMFA disclosed</p> <p>14 the May 2019 Notes in its own audited financial</p> <p>15 statements?</p> <p>16 A. I assume so.</p> <p>17 Q. Have you ever –</p> <p>18 A. I don't have specific – I don't</p> <p>19 have specific awareness, but it's not reported</p> <p>20 here but not on HCMFA; so I assume they are,</p> <p>21 yes.</p> <p>22 Q. Okay. And do you sign Management</p> <p>23 Representation Letters for HCMFA's audit as you</p> <p>24 do for Highland?</p> <p>25 A. I believe so.</p>	<p>Page 129</p> <p>1 JAMES DONDERO</p> <p>2 Q. Have you ever told anyone that</p> <p>3 HCMFA's audited financial statements for the</p> <p>4 period ending December 31, 2018, inaccurately</p> <p>5 described the \$7.4 million transferred from</p> <p>6 Highland to HCMFA as loans?</p> <p>7 MS. DEITSCH-PEREZ: Object to the</p> <p>8 form.</p> <p>9 THE WITNESS: No, I have not; but I</p> <p>10 haven't been involved in any of the audit</p> <p>11 functions for quite some time.</p> <p>12 I don't think I was involved or</p> <p>13 signed Management Representation Letters</p> <p>14 for any period covered by this.</p> <p>15 BY MR. MORRIS:</p> <p>16 Q. Okay. Let's switch gears.</p> <p>17 The advisors have annual contracts</p> <p>18 to manage certain retail funds, correct?</p> <p>19 A. Yes.</p> <p>20 Q. And the retail funds have a board</p> <p>21 that decides whether to renew the contracts</p> <p>22 with the advisors, correct?</p> <p>23 A. Yes.</p> <p>24 Q. And in connection with the annual</p> <p>25 renewal, the advisors provide information to</p>

<p>Page 130</p> <p>1 JAMES DONDERO</p> <p>2 the retail board, correct?</p> <p>3 A. Yes.</p> <p>4 Q. And you've participated in meetings</p> <p>5 with the retail board concerning the renewal</p> <p>6 process, correct?</p> <p>7 A. Sometimes.</p> <p>8 Q. Okay. Do you recall that in late</p> <p>9 2020, the advisors provided a written memo to</p> <p>10 the retail board in connection with the annual</p> <p>11 15-C review process?</p> <p>12 A. No.</p> <p>13 Q. Okay.</p> <p>14 MR. MORRIS: Can we put up</p> <p>15 Exhibit 59, please.</p> <p>16 MS. CANTY: (Complies with request.)</p> <p>17 (Whereupon, Exhibit 59, Memorandum,</p> <p>18 dated October 23, 2020, Bates stamped</p> <p>19 HCMFAS 000025 through HCMFAS 000031, marked</p> <p>20 for identification, as of this date.)</p> <p>21 BY MR. MORRIS:</p> <p>22 Q. Do you see that this is a memo dated</p> <p>23 October 23, 2020?</p> <p>24 A. Yes.</p> <p>25 Q. Is it fair to describe this memo as</p>	<p>Page 131</p> <p>1 JAMES DONDERO</p> <p>2 a memo from the advisors to the retail boards</p> <p>3 concerning a supplemental 15-C information</p> <p>4 request?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. As always, Mr. Dondero, you</p> <p>7 can view any portion of this document. But if</p> <p>8 we could just scroll down a little bit, I just</p> <p>9 want to know --</p> <p>10 MS. DEITSCH-PEREZ: Do we have a</p> <p>11 copy of this document? Is it in your book?</p> <p>12 MR. MORRIS: No.</p> <p>13 MS. DEITSCH-PEREZ: Okay. Well,</p> <p>14 then he can't actually look at it. He's</p> <p>15 looking at what's on the screen.</p> <p>16 MR. MORRIS: Please.</p> <p>17 BY MR. MORRIS:</p> <p>18 Q. Mr. Dondero, do you understand what</p> <p>19 I meant?</p> <p>20 Will you let me know if there's any</p> <p>21 portion of the document you want to see?</p> <p>22 A. Sure. Can you -- can you just keep</p> <p>23 scrolling and let me see the next page?</p> <p>24 Q. Thank you, sir.</p> <p>25 MS. CANTY: (Complies with request.)</p>
<p>Page 132</p> <p>1 JAMES DONDERO</p> <p>2 THE WITNESS: Just stop there for a</p> <p>3 second.</p> <p>4 MS. CANTY: (Complies with request.)</p> <p>5 THE WITNESS: Okay. Keep going.</p> <p>6 MS. CANTY: (Complies with request.)</p> <p>7 BY MR. MORRIS:</p> <p>8 Q. Just -- I'm going to ask you</p> <p>9 questions about Section 2 just so you know, but</p> <p>10 you're welcome to view any portion of this</p> <p>11 document as you believe necessary.</p> <p>12 MS. CANTY: I also put it in the</p> <p>13 chat, John.</p> <p>14 MR. MORRIS: Thank you.</p> <p>15 THE WITNESS: I see it.</p> <p>16 BY MR. MORRIS:</p> <p>17 Q. Okay. So --</p> <p>18 A. Can you go -- let's keep going.</p> <p>19 Just I'll quickly read the whole thing.</p> <p>20 Q. No problem.</p> <p>21 A. That's it. Okay. Got it. All</p> <p>22 right.</p> <p>23 Q. Okay. So now that you've seen the</p> <p>24 substance of the memo, do you recall if you saw</p> <p>25 it before today?</p>	<p>Page 133</p> <p>1 JAMES DONDERO</p> <p>2 A. I've never seen it before today.</p> <p>3 Q. Okay. So do you know who's</p> <p>4 responsible for preparing a memo of this type</p> <p>5 on behalf of the advisors?</p> <p>6 A. Let's go back to the front and see</p> <p>7 who it's from.</p> <p>8 Q. Sure.</p> <p>9 MS. CANTY: (Complies with request.)</p> <p>10 BY MR. MORRIS:</p> <p>11 Q. Is that --</p> <p>12 A. Yeah. Now, I -- given what it is,</p> <p>13 it's something that, I'm sure, comes out of</p> <p>14 legal and compliance.</p> <p>15 Q. And does -- do the advisors have --</p> <p>16 withdrawn.</p> <p>17 Did the advisors have their own</p> <p>18 legal and compliance officers as of October 23,</p> <p>19 2020?</p> <p>20 A. No.</p> <p>21 Q. Did they have any -- did anybody</p> <p>22 serve as the advisors' general counsel as of</p> <p>23 October 23, 2020?</p> <p>24 A. My belief and recollection is the</p> <p>25 Shared Services Agreements provided the legal</p>

<p>Page 134</p> <p>1 JAMES DONDERO</p> <p>2 and accounting support for all the funds listed</p> <p>3 in the "to" section here.</p> <p>4 As I said earlier, NexPoint has a</p> <p>5 couple accountants – I mean – I'm sorry – a</p> <p>6 couple lawyers who do real estate transactions</p> <p>7 stuff. Their – their title – their title</p> <p>8 meaning DC's counsel, DC Sauter, who's the most</p> <p>9 senior attorney there, it might be general</p> <p>10 counsel; but he only does real estate</p> <p>11 transactions.</p> <p>12 The legal dependents of NexPoint and</p> <p>13 HCMFA was on the Shared Services Agreement and</p> <p>14 the Highland attorneys that performed those</p> <p>15 Shared Services Agreements.</p> <p>16 Q. Okay. Did anybody acting on behalf</p> <p>17 of the advisors review and approve this memo</p> <p>18 before it was sent to the retail funds?</p> <p>19 A. I don't know.</p> <p>20 Q. Is it your practice as the president</p> <p>21 of the advisors to have memos sent to the</p> <p>22 retail board without anybody reviewing and</p> <p>23 approving the memos on behalf of the advisors?</p> <p>24 MS. DEITSCH-PEREZ: Object to the</p> <p>25 form.</p>	<p>Page 135</p> <p>1 JAMES DONDERO</p> <p>2 THE WITNESS: I'm not aware of what</p> <p>3 standard practice was or wasn't; but again,</p> <p>4 the infrastructure for something like this</p> <p>5 would have been only at Highland.</p> <p>6 HCMFA only had portfolio managers</p> <p>7 and analysts as employees, and NexPoint</p> <p>8 pretty much only had portfolio managers and</p> <p>9 analysts as employees.</p> <p>10 The staff functions were at</p> <p>11 Highland, and Highland serviced the funds</p> <p>12 via a Shared Services Agreement that was</p> <p>13 still in place as of the date of this memo.</p> <p>14 MR. MORRIS: Okay. Can we go down</p> <p>15 to Section 2, please.</p> <p>16 MS. CANTY: (Complies with request.)</p> <p>17 BY MR. MORRIS:</p> <p>18 Q. Looking at Section 2, do you see</p> <p>19 that there's a question as to whether there are</p> <p>20 any material amounts currently payable or due</p> <p>21 in the future EG notes to –</p> <p>22 A. Yes.</p> <p>23 Q. – the Highland by HCMFA or</p> <p>24 NexPoint?</p> <p>25 A. Yes.</p>
<p>Page 136</p> <p>1 JAMES DONDERO</p> <p>2 Q. Okay. In the 53 or 54 weeks since</p> <p>3 this memo as was sent, do you know if it has</p> <p>4 been amended or modified in any way?</p> <p>5 A. I believe there was similar memos</p> <p>6 like this for this year's annual – for the</p> <p>7 2021 renewal, but I do not have – I've not</p> <p>8 seen those either; and I don't know how this</p> <p>9 answer would have changed.</p> <p>10 Q. Okay. But at least as of</p> <p>11 October 23, 2020, this is the response that the</p> <p>12 advisors gave to the retail board in response</p> <p>13 to Question Number 2, right?</p> <p>14 MS. DEITSCH-PEREZ: Object to the</p> <p>15 form.</p> <p>16 THE WITNESS: As far – as far as I</p> <p>17 know, having seen it here for the first</p> <p>18 time and not knowing whether this was the</p> <p>19 final or if there were subsequent letters</p> <p>20 and not knowing what the 2021 letter looks</p> <p>21 like, on its surface that appears so; but I</p> <p>22 have no awareness.</p> <p>23 BY MR. MORRIS:</p> <p>24 Q. Okay. And just I'll represent to</p> <p>25 you, Mr. Dondero, that I obtained this letter</p>	<p>Page 137</p> <p>1 JAMES DONDERO</p> <p>2 from counsel to the advisors in response to my</p> <p>3 specific request for the October 2020, 15-C</p> <p>4 response. So that's how – that's how I got it</p> <p>5 just so you know.</p> <p>6 A. Okay.</p> <p>7 Q. So – so were you aware in October</p> <p>8 of 2020 that NexPoint informed the retail board</p> <p>9 that as of June 30, 2020, it owed Highland and</p> <p>10 its affiliates approximately \$23.7 million?</p> <p>11 MS. DEITSCH-PEREZ: Object to the</p> <p>12 form.</p> <p>13 THE WITNESS: I was not aware.</p> <p>14 BY MR. MORRIS:</p> <p>15 Q. Does that amount comport with your</p> <p>16 recollection as to what was outstanding on the</p> <p>17 May 31, 2017, note that NexPoint gave to</p> <p>18 Highland?</p> <p>19 A. I don't have awareness.</p> <p>20 Q. Okay. Did NexPoint – do you know</p> <p>21 if NexPoint ever informed the retail board that</p> <p>22 any – any portion of that \$23.7 million was</p> <p>23 subject to any of the agreements that you</p> <p>24 entered into with the Dugaboy trustee?</p> <p>25 A. I – I don't know.</p>

<p>Page 138</p> <p>1 JAMES DONDERO</p> <p>2 Q. Did you ever instruct anybody on</p> <p>3 behalf of NexPoint to advise the retail board</p> <p>4 of the existence of the agreements?</p> <p>5 A. No, I do not believe so.</p> <p>6 Q. Do you know if anybody acting on</p> <p>7 behalf of NexPoint has ever informed the retail</p> <p>8 board that NexPoint's outstanding obligation</p> <p>9 was subject to the agreements that you entered</p> <p>10 into with the Dugaboy trustee?</p> <p>11 A. No.</p> <p>12 Q. Did you ever inform the retail</p> <p>13 boards that any portion of this \$23 million was</p> <p>14 subject to offset?</p> <p>15 A. You know what, I – let me answer</p> <p>16 that and let me also adjust the last five no</p> <p>17 answers I just rattled off.</p> <p>18 I'm thinking in the context of the</p> <p>19 time period of the date of this letter, which</p> <p>20 is October of 2020.</p> <p>21 Again, there would have been similar</p> <p>22 letters and disclosures like this and</p> <p>23 additional questions, initial requests for</p> <p>24 renewal, and then subsequent questions,</p> <p>25 probably multiple subsequent questions, given</p>	<p>Page 139</p> <p>1 JAMES DONDERO</p> <p>2 everything that's going on with the Highland</p> <p>3 bankruptcy in 2021.</p> <p>4 And I'm not aware of what those</p> <p>5 letters contain. I haven't seen those letters</p> <p>6 either, but those letters may include quite a</p> <p>7 bit of disclosure regarding the questions that</p> <p>8 you're asking me; but I don't know. But I</p> <p>9 didn't specifically instruct anybody to tell</p> <p>10 the board. I also didn't instruct anybody</p> <p>11 specifically to not tell the board.</p> <p>12 So I don't know what was told to the</p> <p>13 board for the period after October 2020.</p> <p>14 Q. Okay. I appreciate that, and I can</p> <p>15 only ask you what you know, right?</p> <p>16 And so what may or may not be in any</p> <p>17 other report is kind of irrelevant here because</p> <p>18 you haven't seen those reports, right?</p> <p>19 A. Correct.</p> <p>20 Q. Okay. And so you have no basis of</p> <p>21 knowing one way or the other whether any report</p> <p>22 delivered to the retail board after October</p> <p>23 2020 – 2020 contains anything about the</p> <p>24 agreements that you entered into with the</p> <p>25 Dugaboy trustee, correct?</p>
<p>Page 140</p> <p>1 JAMES DONDERO</p> <p>2 A. Right. I just want to be clear that</p> <p>3 my answer's saying I did not specifically</p> <p>4 instruct somebody to tell them. It doesn't</p> <p>5 mean they don't know or someone else didn't</p> <p>6 tell them.</p> <p>7 Q. Okay.</p> <p>8 A. So that's – that's a clarification</p> <p>9 I want to make.</p> <p>10 Q. Okay. No problem.</p> <p>11 And then – and then do you see that</p> <p>12 there's a report to the retail board that HCMFA</p> <p>13 had approximately \$12.3 million outstanding to</p> <p>14 Highland as of June 30, 2020?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. So just the same type of</p> <p>17 questions.</p> <p>18 Do you have any knowledge as to how</p> <p>19 that number was calculated?</p> <p>20 A. No.</p> <p>21 Q. Do you know if it includes the</p> <p>22 \$7.4 million, which is the aggregate principal</p> <p>23 amount of the two notes that HCMFA issued to</p> <p>24 Highland in May of 2019?</p> <p>25 A. I don't specifically, but given</p>	<p>Page 141</p> <p>1 JAMES DONDERO</p> <p>2 everything we have gone over in the last – I</p> <p>3 don't know. Probably.</p> <p>4 Q. Okay. Do you know whether anybody</p> <p>5 has informed the retail board on behalf of</p> <p>6 HCMFA that that \$12.3 million was overstated by</p> <p>7 \$7.4 million?</p> <p>8 A. I – I don't know.</p> <p>9 Q. Okay. Do you know whether – do you</p> <p>10 know whether anybody acting behalf of HCMFA</p> <p>11 ever told the retail boards that the</p> <p>12 \$12.3 million was subject to offset of any</p> <p>13 kind?</p> <p>14 A. I don't know, but I can't imagine</p> <p>15 the October 21 letter didn't address some of</p> <p>16 those issues because those issues I'm not sure</p> <p>17 were known at this point in time.</p> <p>18 Q. Okay. If – and we can look at</p> <p>19 paragraph 1 if it helps.</p> <p>20 But my question is whether you're</p> <p>21 aware of anybody on behalf of HCMFA ever</p> <p>22 informing the retail board in 2020 that HCMFA</p> <p>23 had claims against Highland?</p> <p>24 MS. DEITSCH-PEREZ: Object to the</p> <p>25 form.</p>

<p>Page 142</p> <p>1 JAMES DONDERO</p> <p>2 THE WITNESS: I don't know.</p> <p>3 BY MR. MORRIS:</p> <p>4 Q. Do you know whether anybody acting</p> <p>5 on behalf of either the advisors informed the</p> <p>6 retail board at any time in the year 2020 that</p> <p>7 either advisor had claims against Highland?</p> <p>8 MS. DEITSCH-PEREZ: Object to the</p> <p>9 form.</p> <p>10 THE WITNESS: I don't know.</p> <p>11 MR. MORRIS: Okay. We can take that</p> <p>12 down, please.</p> <p>13 MS. CANTY: (Complies with request.)</p> <p>14 BY MR. MORRIS:</p> <p>15 Q. Are you aware that the Court</p> <p>16 confirmed the Debtor's Fifth Amended Complaint</p> <p>17 of Reorganization in February of 2021?</p> <p>18 A. Generally.</p> <p>19 Q. And do you recall that objections to</p> <p>20 the confirmation of the plan were filed by you</p> <p>21 and each of the advisors, among others?</p> <p>22 A. Yes.</p> <p>23 Q. And do you recall that these</p> <p>24 actions, these lawsuits to collect on the</p> <p>25 notes, they were commenced before the</p>	<p>Page 143</p> <p>1 JAMES DONDERO</p> <p>2 confirmation hearing, right?</p> <p>3 A. I – I don't – I don't know.</p> <p>4 Q. All right. I'll represent to you</p> <p>5 that the lawsuits were commenced on or about</p> <p>6 January 22, and the confirmation hearing took</p> <p>7 place, I think, on February 2 and February 3,</p> <p>8 2021.</p> <p>9 Does that refresh your recollection</p> <p>10 at all that the lawsuits were known to you at</p> <p>11 the time of confirmation?</p> <p>12 MS. DEITSCH-PEREZ: Object to the</p> <p>13 form.</p> <p>14 THE WITNESS: Not specifically. I</p> <p>15 mean, given the details you just explained,</p> <p>16 I guess generally.</p> <p>17 BY MR. MORRIS:</p> <p>18 Q. Okay. I'd like to refer to you</p> <p>19 NexPoint and HCMFA and HCRE and Services</p> <p>20 collectively as the defendants for the next set</p> <p>21 of questions, okay?</p> <p>22 A. Okay.</p> <p>23 Q. And these questions are in your</p> <p>24 capacity as an individual and in your 30(b)(6)</p> <p>25 capacity, okay?</p>
<p>Page 144</p> <p>1 JAMES DONDERO</p> <p>2 Is that okay, sir?</p> <p>3 A. I'll do the best I can. If I – if</p> <p>4 I need clarity or caveats, I'll throw them out</p> <p>5 there.</p> <p>6 Q. Okay. Now, I do understand you're</p> <p>7 not a 30(b)(6) witness for HCMFA today. So</p> <p>8 let's make that clear.</p> <p>9 MS. DEITSCH-PEREZ: Thank you.</p> <p>10 BY MR. MORRIS:</p> <p>11 Q. As to HCMFA, you're just here in</p> <p>12 your individual capacity as the control person,</p> <p>13 okay?</p> <p>14 Prior to confirmation, do you know</p> <p>15 whether anyone acting on behalf of any of the</p> <p>16 defendants ever disclosed to the bankruptcy</p> <p>17 court the terms or the existence of your</p> <p>18 agreement – agreements with the Dugaboy</p> <p>19 trustee?</p> <p>20 A. I guess generally, I've testified to</p> <p>21 this already. There were numerous</p> <p>22 conversations with Seery, and I know Lynn had</p> <p>23 conversations.</p> <p>24 Q. Sir, I apologize, but I'm going to</p> <p>25 interrupt because I know you're tired; and I</p>	<p>Page 145</p> <p>1 JAMES DONDERO</p> <p>2 want to get this done. But my question had to</p> <p>3 do with the disclosure to the bankruptcy court,</p> <p>4 okay? Let me just try again.</p> <p>5 Are you aware, sir, whether any of</p> <p>6 the defendants disclosed to the bankruptcy</p> <p>7 court prior to confirmation the existence of</p> <p>8 the agreements that you entered into with the</p> <p>9 Dugaboy trustee?</p> <p>10 MS. DEITSCH-PEREZ: Object to the</p> <p>11 form and to interrupting the witness.</p> <p>12 THE WITNESS: I'll say yes.</p> <p>13 BY MR. MORRIS:</p> <p>14 Q. Okay. Did you do that?</p> <p>15 A. Yes.</p> <p>16 Q. And did you do that as part of your</p> <p>17 testimony in the hearing, or did you do it</p> <p>18 through the filing of a pleading?</p> <p>19 MS. DEITSCH-PEREZ: Object to the</p> <p>20 form.</p> <p>21 THE WITNESS: I don't – I don't</p> <p>22 know about pleadings or filings. I – I</p> <p>23 don't know.</p> <p>24 BY MR. MORRIS:</p> <p>25 Q. Do you recall what you told the</p>

<p style="text-align: right;">Page 146</p> <p>1 JAMES DONDERO</p> <p>2 bankruptcy court about the agreements that you</p> <p>3 entered into with the Dugaboy trustee?</p> <p>4 A. No. I'm not – yes. No. I'm</p> <p>5 not – no, I don't. I don't want to – I don't</p> <p>6 want to start talking and have you strike it or</p> <p>7 object. So I'll just answer specifically until</p> <p>8 you get to the question.</p> <p>9 Q. Yeah. So – so again, I'm not</p> <p>10 trying to trick you.</p> <p>11 Can you recall when you told the</p> <p>12 bankruptcy court that you had entered into will</p> <p>13 the agreements with the Dugaboy trustee?</p> <p>14 A. No.</p> <p>15 Q. Can you remember the subject matter</p> <p>16 of any hearing at which you informed the</p> <p>17 bankruptcy court about the existence of the</p> <p>18 agreements that you entered into with the</p> <p>19 Dugaboy trustee?</p> <p>20 A. I don't know where or how this works</p> <p>21 legally. But every written proposal we put</p> <p>22 forward as a solution and as a plot plan,</p> <p>23 always had a zero on all the affiliated notes</p> <p>24 as being a zero in something that was</p> <p>25 ultimately likely to be compensation.</p>	<p style="text-align: right;">Page 147</p> <p>1 JAMES DONDERO</p> <p>2 All of those settlement proposals,</p> <p>3 some were done formally through Seery; some</p> <p>4 were done indirectly; some of it were – some</p> <p>5 of them were done to the independent board;</p> <p>6 some of them were done directly to Clemente.</p> <p>7 But all of those documented the expectation</p> <p>8 that the notes were compensation.</p> <p>9 Q. Do you believe that any of the</p> <p>10 documents that you just described were ever</p> <p>11 presented to the bankruptcy court?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. When and in what context were</p> <p>14 those documents delivered to the bankruptcy</p> <p>15 court?</p> <p>16 A. I believed that the independent</p> <p>17 board and Seery were representatives of the</p> <p>18 bankruptcy court in that regard.</p> <p>19 So I think within a month, two</p> <p>20 months of the filing, there were proposals made</p> <p>21 to creditors directly and the independent</p> <p>22 board; and then subsequently, once Seery became</p> <p>23 president, to him.</p> <p>24 And then when Seery proved</p> <p>25 ineffective regarding settlements, there were</p>
<p style="text-align: right;">Page 148</p> <p>1 JAMES DONDERO</p> <p>2 reach outs – reaches out to creditors directly</p> <p>3 again and – to Clemente and the committee; but</p> <p>4 I think the committee already sold all their</p> <p>5 stuff by that point.</p> <p>6 I mean, I – listen, I – but I</p> <p>7 consider those reach-outs and characterizations</p> <p>8 of the notes as not part of settlement under</p> <p>9 the estate and that is likely to be</p> <p>10 compensation notifying the Court generally.</p> <p>11 Q. Okay. Are you aware of any notice</p> <p>12 that was ever given to Judge Jernigan about the</p> <p>13 existence of any of the agreements that you</p> <p>14 entered into with the Dugaboy trustee?</p> <p>15 A. I – I don't know.</p> <p>16 Q. Okay. You're not aware of any as</p> <p>17 you sit here right now; is that fair?</p> <p>18 A. Yes. I'm not aware if any of my</p> <p>19 reach-outs to the people that I described ever</p> <p>20 made it to Jernigan. I don't know.</p> <p>21 Q. Okay.</p> <p>22 A. I know she asked for updates on the</p> <p>23 plot plan. I know she asked for whatever, but</p> <p>24 I don't know what specificity any of the people</p> <p>25 I described presented them to her. So I don't</p>	<p style="text-align: right;">Page 149</p> <p>1 JAMES DONDERO</p> <p>2 know.</p> <p>3 Q. And I appreciate what you've said</p> <p>4 about the proposals that you've made. But my</p> <p>5 next question's very specific.</p> <p>6 Prior to the commencement of</p> <p>7 litigation, did you or anybody acting on your</p> <p>8 behalf ever tell Jim Seery or Matt Clemente of</p> <p>9 your agreements with the Dugaboy trustee?</p> <p>10 A. I – I don't know specifically.</p> <p>11 Q. Thank you very much.</p> <p>12 THE COURT REPORTER: I'm sorry.</p> <p>13 When you get to a good point, could we just</p> <p>14 take a quick break?</p> <p>15 MR. MORRIS: Yeah. Why don't we do</p> <p>16 that, and I hope to try to wrap up. So</p> <p>17 it's 5:37. I mean, I'm going to need</p> <p>18 probably, you know, another half hour or an</p> <p>19 hour; but I want to try to finish. It's</p> <p>20 5:38.</p> <p>21 I'm fine with if we just come back</p> <p>22 at 4:45 Central Time, seven minutes.</p> <p>23 THE VIDEOGRAPHER: All right. We're</p> <p>24 off record at 4:38.</p> <p>25 (Whereupon, a break was taken.)</p>

<p>Page 150</p> <p>1 JAMES DONDERO</p> <p>2 THE VIDEOGRAPHER: This is the</p> <p>3 beginning of Media Number 3 in the</p> <p>4 deposition of James Dondero. We are back</p> <p>5 on the record. The time is 4:45.</p> <p>6 BY MR. MORRIS:</p> <p>7 Q. Just to finish up on the topic we</p> <p>8 were on when we took the break, Mr. Dondero.</p> <p>9 Prior to confirmation, do you know</p> <p>10 which of the defendants ever informed the</p> <p>11 bankruptcy court that any of the Promissory</p> <p>12 Notes that are the subject of the lawsuits were</p> <p>13 unenforceable for any reason?</p> <p>14 And when I use the phrase</p> <p>15 "bankruptcy court" here – you know what, let</p> <p>16 me ask a different question.</p> <p>17 Prior to confirmation, do you know</p> <p>18 if anybody acting on behalf of the defendants</p> <p>19 ever disclosed to Judge Jemigan that any of</p> <p>20 the Promissory Notes subject to the lawsuits</p> <p>21 were unenforceable for any reason?</p> <p>22 MS. DEITSCH-PEREZ: Object to the</p> <p>23 form.</p> <p>24 THE WITNESS: I don't know.</p> <p>25</p>	<p>Page 151</p> <p>1 JAMES DONDERO</p> <p>2 BY MR. MORRIS:</p> <p>3 Q. Prior to confirmation, did you</p> <p>4 direct anybody to inform Judge Jemigan that</p> <p>5 any of the Promissory Notes were unenforceable</p> <p>6 for any reason?</p> <p>7 A. I don't know.</p> <p>8 Q. Okay. I want to direct your</p> <p>9 attention to December 2020.</p> <p>10 Do you recall if you had a</p> <p>11 conversation with Frank Waterhouse concerning</p> <p>12 payments that were due to Highland by any of</p> <p>13 the companies that you directly or indirectly</p> <p>14 own or control?</p> <p>15 A. I'm trying to think. Generally, we</p> <p>16 overpaid on shared services, so – by a</p> <p>17 significant amount, I believe 14, 15 million</p> <p>18 bucks. And then there was a supposed to be an</p> <p>19 overall transition settlement true-up regarding</p> <p>20 the employees, the office space, you know,</p> <p>21 whatever.</p> <p>22 So the – yeah, that's – that's the</p> <p>23 – that's my general recollection.</p> <p>24 Q. But did you give Mr. Waterhouse any</p> <p>25 instructions as to whether to pay or not pay</p>
<p>Page 152</p> <p>1 JAMES DONDERO</p> <p>2 any amounts that were due and owing to Highland</p> <p>3 under any agreement between Highland and any</p> <p>4 affiliate?</p> <p>5 MS. DEITSCH-PEREZ: Object to the</p> <p>6 form.</p> <p>7 Are you asking about the Notes or</p> <p>8 the Shared Services Agreements?</p> <p>9 MR. MORRIS: I'm asking about – I'm</p> <p>10 asking very broadly any payments.</p> <p>11 THE WITNESS: I do remember having</p> <p>12 conversations not to pay any more shared</p> <p>13 services.</p> <p>14 And I hope there weren't anymore</p> <p>15 payments on shared services. There –</p> <p>16 There was never a specific to not pay the</p> <p>17 notes.</p> <p>18 BY MR. MORRIS:</p> <p>19 Q. So your recollection is that you</p> <p>20 instructed Mr. Waterhouse not to make any</p> <p>21 further payments under the shared services, and</p> <p>22 that's the instruction you gave?</p> <p>23 A. Yes.</p> <p>24 Q. Did you ever tell anybody in</p> <p>25 December of 2020 about your conversation with</p>	<p>Page 153</p> <p>1 JAMES DONDERO</p> <p>2 Mr. Waterhouse?</p> <p>3 A. Not that I recall.</p> <p>4 Q. Do you recall telling anybody other</p> <p>5 than Mr. Waterhouse in December 2020 that no</p> <p>6 payment should be made to Highland under the</p> <p>7 Shared Services Agreement?</p> <p>8 A. I do believe there was a team – I</p> <p>9 can't remember – I know Dustin Norris is on</p> <p>10 that team. He was aware. He was aware. And</p> <p>11 as a matter of fact, I think – yeah. He – I</p> <p>12 know he was aware for sure.</p> <p>13 Q. Anybody else?</p> <p>14 A. There were other people on that</p> <p>15 team, but I can't remember who was on that team</p> <p>16 or who was in the room at any time.</p> <p>17 Q. Is there anything in writing that</p> <p>18 you recall that reflects the instruction that</p> <p>19 you gave to Mr. Waterhouse in December 2020</p> <p>20 that we're talking about?</p> <p>21 A. I believe the back-and-forth and the</p> <p>22 true-up with Seery on the multiple of things</p> <p>23 that I was just discussing, you know, right to</p> <p>24 transition of people, it included no more</p> <p>25 shared services being paid and a credit for</p>

<p>Page 154</p> <p>1 JAMES DONDERO</p> <p>2 overpayment on shared services. And those –</p> <p>3 those spreadsheets went back and forth, and</p> <p>4 Seery has copies of them also.</p> <p>5 Q. Are you aware of any payments being</p> <p>6 made by the advisors to Highland after</p> <p>7 November 30, 2020?</p> <p>8 A. Hopefully not on shared services. I</p> <p>9 believe there were payments on principal and</p> <p>10 interest on notes.</p> <p>11 Q. Were any of those payments that you</p> <p>12 have in mind made before the end of calendar</p> <p>13 year 2020 – withdrawn.</p> <p>14 Were any of those payments that you</p> <p>15 have in mind made in December 2020?</p> <p>16 A. I don't know. I don't know which</p> <p>17 ones were paid and kept current. I don't know</p> <p>18 which ones were cured. I don't – I don't</p> <p>19 remember which ones were which.</p> <p>20 Q. Are you aware of any note that was</p> <p>21 tendered by one of Highland's affiliates on</p> <p>22 which payment was made in December 2020?</p> <p>23 A. I don't know. I don't know when –</p> <p>24 I don't know which ones were kept current. I</p> <p>25 don't know which ones were cured in December.</p>	<p>Page 155</p> <p>1 JAMES DONDERO</p> <p>2 I don't know which ones were cured in January</p> <p>3 or February. I don't know.</p> <p>4 Q. Is it your testimony that you</p> <p>5 believe that one or more of Highland affiliates</p> <p>6 made a payment in December 2020 to cure – as a</p> <p>7 cure payment?</p> <p>8 MS. DEITSCH-PEREZ: Object to the</p> <p>9 form.</p> <p>10 BY MR. MORRIS:</p> <p>11 Q. I just – I'm sorry. I –</p> <p>12 A. I – I – okay.</p> <p>13 Q. Yeah. I just want to try to get</p> <p>14 this as clearly as I can. Did you –</p> <p>15 A. I believe –</p> <p>16 Q. Go ahead, sir.</p> <p>17 A. No. I'll let you go. It's better</p> <p>18 if you ask me.</p> <p>19 Q. Okay. Did you direct anybody to</p> <p>20 make any payment in December 2020 to Highland</p> <p>21 on behalf of any affiliate that you owned or</p> <p>22 controlled?</p> <p>23 A. I believe all notes are outstanding</p> <p>24 and current and in good standing. I don't know</p> <p>25 when they were cured.</p>
<p>Page 156</p> <p>1 JAMES DONDERO</p> <p>2 Q. Are you just talking about the term</p> <p>3 notes here or the demand notes as well?</p> <p>4 A. All of the above. All of the notes</p> <p>5 as far as I know.</p> <p>6 Q. Are you aware that in December 2020,</p> <p>7 Highland made a demand for payment under all of</p> <p>8 the demand notes?</p> <p>9 A. And I believe they're all current as</p> <p>10 far as interest and principal amortization. I</p> <p>11 believe they've all been cured.</p> <p>12 Q. Okay. Can you identify any payment</p> <p>13 that was made in December 2020 to Highland on</p> <p>14 behalf of yourself or any entity that you</p> <p>15 directly or indirectly own or control?</p> <p>16 A. I wouldn't have been involved in –</p> <p>17 I wouldn't have been involved in normal course</p> <p>18 payments. I know there were – I know for sure</p> <p>19 there were cure payments in January. I don't</p> <p>20 know if there were in December.</p> <p>21 Q. Okay. And that's – we'll get to</p> <p>22 January. I'm just trying to finish up</p> <p>23 December.</p> <p>24 Are you aware of any payments made</p> <p>25 in December 2020 –</p>	<p>Page 157</p> <p>1 JAMES DONDERO</p> <p>2 MS. DEITSCH-PEREZ: Object to the</p> <p>3 form.</p> <p>4 BY MR. MORRIS:</p> <p>5 Q. – by you – by you or any entity</p> <p>6 directly or indirectly owned or control by you</p> <p>7 to Highland?</p> <p>8 A. I don't have awareness.</p> <p>9 Q. Do you recall that early in 2021,</p> <p>10 Highland gave notice of default on the three</p> <p>11 term notes?</p> <p>12 A. I'm aware in – that January – yes,</p> <p>13 I guess I am aware that Highland declared them</p> <p>14 in default in January, yes.</p> <p>15 Q. And you're aware that in addition to</p> <p>16 declaring them in default, they gave notice of</p> <p>17 acceleration?</p> <p>18 A. I'm not aware of acceleration. I'm</p> <p>19 aware of, I guess, default I had heard.</p> <p>20 Q. Did you ever see the</p> <p>21 notice-of-default letters that Highland sent to</p> <p>22 NexPoint HCRE and services?</p> <p>23 A. I don't believe I've seen all of</p> <p>24 them. I think I've seen one on demand notes.</p> <p>25 I don't think I've – I don't remember seeing</p>

<p>Page 158</p> <p>1 JAMES DONDERO</p> <p>2 any on term loans.</p> <p>3 Q. All right. So as you sit here right</p> <p>4 now, you don't have a recollection of having</p> <p>5 seen the default notices that were sent by</p> <p>6 Highland in January 2021 with respect to the</p> <p>7 term notes, right?</p> <p>8 MS. DEITSCH-PEREZ: Why don't you</p> <p>9 show him one.</p> <p>10 THE WITNESS: I don't recall. Yeah.</p> <p>11 I mean, I don't – I don't recall seeing</p> <p>12 any of them.</p> <p>13 BY MR. MORRIS:</p> <p>14 Q. Okay. How did you learn that</p> <p>15 Highland had sent the default notices?</p> <p>16 A. I believe it was at a hearing I</p> <p>17 attended in person from which I called Frank,</p> <p>18 and I was surprised and annoyed that the</p> <p>19 relative de minimis amounts hadn't been paid;</p> <p>20 and I asked him what does it take to cure them</p> <p>21 or make them current.</p> <p>22 And then he told me the numbers, and</p> <p>23 they were small and de minimis; and I told him</p> <p>24 make sure they get paid and make sure the notes</p> <p>25 are cured.</p>	<p>Page 159</p> <p>1 JAMES DONDERO</p> <p>2 Q. Did you do anything or say anything</p> <p>3 else with respect to your – your learning</p> <p>4 about the declaration of default?</p> <p>5 A. No. It – no. I don't remember</p> <p>6 anything else.</p> <p>7 Q. Did you ask your – do you know</p> <p>8 whether anyone acting on behalf of ever reached</p> <p>9 out to Highland with respect to the payments</p> <p>10 that were made in January of 2021 as cure</p> <p>11 payments as you described them?</p> <p>12 A. Frank was Highland.</p> <p>13 Q. I'm asking –</p> <p>14 A. Frank – Frank – Frank was the</p> <p>15 person I reached out to at Highland. Who else</p> <p>16 would I reach out to at Highland?</p> <p>17 Q. Did you – did you reach out to</p> <p>18 anybody else?</p> <p>19 A. No. Just Frank.</p> <p>20 Q. Okay. Did anybody acting on your</p> <p>21 behalf reach out to anybody else?</p> <p>22 A. Not that I know of or not that I</p> <p>23 thought was necessary.</p> <p>24 Q. In January of 2021, did it occur to</p> <p>25 you to either communicate with or through your</p>
<p>Page 160</p> <p>1 JAMES DONDERO</p> <p>2 lawyer, with Mr. Seery, about this?</p> <p>3 MS. DEITSCH-PEREZ: Object to the</p> <p>4 form.</p> <p>5 THE WITNESS: No. I thought Frank</p> <p>6 was fully empowered.</p> <p>7 BY MR. MORRIS:</p> <p>8 Q. Okay. Did you ever confirm your</p> <p>9 understanding about the cure with</p> <p>10 Mr. Waterhouse in writing?</p> <p>11 A. In writing? No. I believe it was</p> <p>12 all in that phone conversation from the Court.</p> <p>13 I don't – I don't recall anything in writing,</p> <p>14 but I'll check.</p> <p>15 Q. Do you recall sending him an e-mail</p> <p>16 in which you confirmed with Mr. Waterhouse your</p> <p>17 understanding that the debtor had agreed that</p> <p>18 the payments that were being paid would</p> <p>19 constitute a cure?</p> <p>20 A. No, I didn't – no. At the time I</p> <p>21 didn't think it was necessary. It was – the</p> <p>22 cure amount was calculated by Frank. It was</p> <p>23 paid immediately. It was accepted. I never –</p> <p>24 I never thought to memorialize it beyond that.</p> <p>25 Q. Okay. Did you – did you ever ask</p>	<p>Page 161</p> <p>1 JAMES DONDERO</p> <p>2 your attorneys to confirm with Pachulski Stang</p> <p>3 Ziehl & Jones or anybody acting on behalf of</p> <p>4 the debtor that the payments that were made</p> <p>5 would be deemed to be cure payments?</p> <p>6 MS. DEITSCH-PEREZ: I'm going to not</p> <p>7 to disclose communications with counsel.</p> <p>8 BY MR. MORRIS:</p> <p>9 Q. Okay. Do you know whether your</p> <p>10 lawyers or anybody acting on your behalf ever</p> <p>11 sought to confirm your understanding that the</p> <p>12 payments would be deemed to have cured the</p> <p>13 default under the three term notes?</p> <p>14 A. Not that I'm aware of.</p> <p>15 Q. Okay. Is there any written record</p> <p>16 of your call with Mr. Waterhouse?</p> <p>17 A. If it was from my cell phone, I'm</p> <p>18 sure there's a written record taking place of</p> <p>19 the call taking place.</p> <p>20 Q. Right. But did you take any notes,</p> <p>21 or is there anything in writing that</p> <p>22 memorialized or reflected your conversation</p> <p>23 with Mr. Waterhouse in January of 2021 about</p> <p>24 the cure?</p> <p>25 A. Not that I'm aware of and not that I</p>

<p>Page 162</p> <p>1 JAMES DONDERO</p> <p>2 thought was necessary.</p> <p>3 Q. Okay. Did – did you ever tell</p> <p>4 Judge Jernigan that you had made cure payments?</p> <p>5 A. I didn't know I'm allowed to have</p> <p>6 ex parte conversations with her, but there's a</p> <p>7 lot of things I'd like to tell her about this</p> <p>8 case; but no I did not.</p> <p>9 Q. All right. I'm not talking about</p> <p>10 ex parte conversations, sir. Let's take</p> <p>11 confirmation, for example.</p> <p>12 Did you or anybody acting on any of</p> <p>13 the defendants' behalf ever inform</p> <p>14 Judge Jernigan that Frank Waterhouse had told</p> <p>15 you that the payments in January 2021 would be</p> <p>16 deemed to be cure payments?</p> <p>17 A. Not that I'm aware of.</p> <p>18 Q. Thank you.</p> <p>19 MR. MORRIS: Give me one more</p> <p>20 moment. In fact, I'm going to ask for just</p> <p>21 three minutes. I'm going to check and see</p> <p>22 how much more I have here. It won't be</p> <p>23 long if I have anything. So let's go off</p> <p>24 the record.</p> <p>25 THE VIDEOGRAPHER: Would you like to</p>	<p>Page 163</p> <p>1 JAMES DONDERO</p> <p>2 go off the record?</p> <p>3 All right. We're off record at</p> <p>4 5:03.</p> <p>5 (Whereupon, a break was taken.)</p> <p>6 THE VIDEOGRAPHER: We are back on</p> <p>7 the record. The time is 5:06.</p> <p>8 MR. MORRIS: Okay. Asia, can you</p> <p>9 please put on the screen Exhibit 24, which</p> <p>10 are Mr. Dondero's written responses to</p> <p>11 discovery?</p> <p>12 MS. CANTY: (Complies with request.)</p> <p>13 (Whereupon, Exhibit 24, Defendant</p> <p>14 James Dondero's Objections and Responses to</p> <p>15 Plaintiff's Requests for Admission,</p> <p>16 Interrogatories, and Requests for</p> <p>17 Production, marked for identification, as</p> <p>18 of this date.)</p> <p>19 BY MR. MORRIS:</p> <p>20 Q. And Mr. Dondero, I don't know if you</p> <p>21 have that binder in front of you, but this is</p> <p>22 one of the documents that will be in there,</p> <p>23 Number 24.</p> <p>24 A. Number 24?</p> <p>25 Q. Yes, sir.</p>
<p>Page 164</p> <p>1 JAMES DONDERO</p> <p>2 MS. DEITSCH-PEREZ: Do you got it?</p> <p>3 THE WITNESS: Yes.</p> <p>4 BY MR. MORRIS:</p> <p>5 Q. Have you seen this document before,</p> <p>6 sir?</p> <p>7 A. No.</p> <p>8 Q. Let's go to page 15 and see if that</p> <p>9 refreshes your recollection.</p> <p>10 Is that your signature?</p> <p>11 A. Yes.</p> <p>12 MS. DEITSCH-PEREZ: Yeah. It's late</p> <p>13 in the day, John.</p> <p>14 THE WITNESS: Yes.</p> <p>15 MR. MORRIS: That's why I showed him</p> <p>16 the signature.</p> <p>17 BY MR. MORRIS:</p> <p>18 Q. Does that refresh your recollection</p> <p>19 that you've seen this before?</p> <p>20 A. No. It refreshes my recollection</p> <p>21 that I signed it.</p> <p>22 Q. Okay. And –</p> <p>23 A. Not that I recall – not that I</p> <p>24 looked at it in detail in any way.</p> <p>25 Q. Okay. Did you review it before you</p>	<p>Page 165</p> <p>1 JAMES DONDERO</p> <p>2 signed it?</p> <p>3 A. I – as I sit here today, I don't</p> <p>4 remember. So let's go through whatever</p> <p>5 questions you have.</p> <p>6 Q. Okay.</p> <p>7 MR. MORRIS: Go to page 8, please.</p> <p>8 MS. CANTY: (Complies with request.)</p> <p>9 BY MR. MORRIS:</p> <p>10 Q. You will see that Interrogatories 3</p> <p>11 and 4 ask in substance for you to admit that</p> <p>12 you never disclosed the terms or existence of</p> <p>13 the agreement to Frank Waterhouse prior to the</p> <p>14 commencement of the adversary proceeding.</p> <p>15 Do you see that?</p> <p>16 MS. DEITSCH-PEREZ: Wait. Object to</p> <p>17 the form. Those are two different</p> <p>18 requests.</p> <p>19 MR. MORRIS: Okay. Okay. I was</p> <p>20 trying to do this quickly. We'll do it –</p> <p>21 we'll do it – we'll do it your way?</p> <p>22 MS. DEITSCH-PEREZ: No. I think you</p> <p>23 – okay.</p> <p>24 BY MR. MORRIS:</p> <p>25 Q. So let's look at Request for</p>

<p>Page 166</p> <p>1 JAMES DONDERO</p> <p>2 Admission Number 3.</p> <p>3 Do you see that Highland asked you</p> <p>4 to admit, quote, "that prior to the</p> <p>5 commencement of the adversary proceeding, you</p> <p>6 never disclosed the terms of the agreement to</p> <p>7 Frank Waterhouse," close quote?</p> <p>8 A. That's on page 8, Number 3, right?</p> <p>9 Q. Correct. And you denied that,</p> <p>10 correct?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. Did you disclose the terms of</p> <p>13 the agreement as we've defined that term to</p> <p>14 Frank Waterhouse prior to the commencement of</p> <p>15 the adversary proceeding?</p> <p>16 A. You know, what I've answered was a</p> <p>17 long answer earlier that the notes were</p> <p>18 compensation. The notes were to be – would be</p> <p>19 forgiven as part of compensation, shouldn't be</p> <p>20 included in any settlement.</p> <p>21 Frank and his group were deeply</p> <p>22 involved in all the plot plan and settlement,</p> <p>23 things that went back and forth. He knew.</p> <p>24 Now, whether he knew the specifics</p> <p>25 of the agreement in terms of, whether I ever</p>	<p>Page 167</p> <p>1 JAMES DONDERO</p> <p>2 discussed the MGM Cornerstone, Trustway, and</p> <p>3 the specifics of the agreement with him before,</p> <p>4 I don't – I don't know. So...</p> <p>5 Q. Do you –</p> <p>6 A. I think denying is appropriate, but</p> <p>7 I'm at not saying Frank knew the specifics of</p> <p>8 the agreement prior to the commencement of</p> <p>9 litigation.</p> <p>10 Q. Did you tell him that you had an</p> <p>11 agreement with the Dugaboy trustee?</p> <p>12 A. I told him there were mechanisms for</p> <p>13 forgiving the – or there were – there were</p> <p>14 mechanisms for the notes being compensation and</p> <p>15 not being part of any kind of cement or asset</p> <p>16 to the estate.</p> <p>17 Q. Okay. Do you recall telling him</p> <p>18 anything else during these conversations?</p> <p>19 A. No, I didn't – no. I didn't feel</p> <p>20 it necessary to talk to him about the</p> <p>21 specifics.</p> <p>22 Q. Okay. And do you recall having this</p> <p>23 discussion in any context other than in</p> <p>24 connection with the preparation of a settlement</p> <p>25 proposal?</p>
<p>Page 168</p> <p>1 JAMES DONDERO</p> <p>2 A. There wasn't another reason – there</p> <p>3 – no, I don't remember any other context.</p> <p>4 Q. Okay.</p> <p>5 A. But the settlements were regular and</p> <p>6 ongoing –</p> <p>7 Q. Okay.</p> <p>8 A. – in our mind, not in the</p> <p>9 Stonehill's mind.</p> <p>10 Q. Okay. Can you go – can we go to</p> <p>11 page 9, Request for Admission Number 8?</p> <p>12 A. Yes.</p> <p>13 Q. Number 8 we asked you to "admit that</p> <p>14 no document was created prior to the</p> <p>15 commencement of the adversary proceeding</p> <p>16 concerning the existence of the agreement."</p> <p>17 Have I read that right –</p> <p>18 A. I'm just reading what's on page 9,</p> <p>19 admit that prior to the agreement he never</p> <p>20 disclosed any other creditor.</p> <p>21 Q. No, no, no. I'm sorry. We're on</p> <p>22 Number 8.</p> <p>23 Can you read Number 8 out loud?</p> <p>24 A. Number 8, I'm sorry. Admit that no</p> <p>25 document was created prior to the commencement</p>	<p>Page 169</p> <p>1 JAMES DONDERO</p> <p>2 of the adversary proceeding concerning the</p> <p>3 existence of the agreement.</p> <p>4 Q. All right. So you've read that.</p> <p>5 And so my question to you is: Did you deny</p> <p>6 that because there are settlement proposals</p> <p>7 that you created that show zero value for the</p> <p>8 Promissory Notes at issue?</p> <p>9 A. Yes, partly.</p> <p>10 Q. Okay. What other documents were</p> <p>11 created prior to the commencement of the</p> <p>12 adversary proceeding that you contend concerned</p> <p>13 the existence of the agreement?</p> <p>14 A. I'm trying to think if the LPA does.</p> <p>15 Q. Okay. Anything else?</p> <p>16 A. No. That would be – that would be</p> <p>17 it.</p> <p>18 Q. Okay. Request for Admission</p> <p>19 Number 9, can you identify the creditor that</p> <p>20 caused you to deny the Request for Admission</p> <p>21 Number 9?</p> <p>22 A. I believe all the creditors via the</p> <p>23 settlement agreements; but, you know,</p> <p>24 specifically Clubock, you know, and to the</p> <p>25 extent Frank is a creditor, Frank.</p>

<p>Page 170</p> <p>1 JAMES DONDERO</p> <p>2 Q. But you just testified a few minutes</p> <p>3 ago, I thought, that you didn't specifically</p> <p>4 tell Mr. Waterhouse of the terms of the</p> <p>5 agreements to him, right? Did I miss –</p> <p>6 A. That's right. I mean, not the</p> <p>7 specific terms, correct.</p> <p>8 Q. Okay. So is there any creditor to</p> <p>9 whom you – is there any creditor of Highland's</p> <p>10 to whom you disclosed the existence of the</p> <p>11 agreements that you entered into with the</p> <p>12 Dugaboy trustee prior to the commencement of</p> <p>13 the adversary proceeding?</p> <p>14 MS. DEITSCH-PEREZ: Asked and</p> <p>15 answered.</p> <p>16 THE WITNESS: Yeah. I mean,</p> <p>17 generally, all the creditors via the</p> <p>18 settlement. And then we have lots of</p> <p>19 one-off conversations with Clubock</p> <p>20 representing UBS where the notes were</p> <p>21 described as going to be forgiven</p> <p>22 compensation, never part of the estate.</p> <p>23 BY MR. MORRIS:</p> <p>24 Q. All right. I don't – I don't want</p> <p>25 to wrestle with you.</p>	<p>Page 171</p> <p>1 JAMES DONDERO</p> <p>2 A. Sure.</p> <p>3 Q. I'm going to remind you that when I</p> <p>4 use the word "agreements," I'm referring</p> <p>5 specifically to the agreements that were set</p> <p>6 forth in paragraph 82 of your answer.</p> <p>7 Do you understand that?</p> <p>8 A. Yes. And so I guess my answer is</p> <p>9 generally but not specifically.</p> <p>10 Q. Okay. And when you say "generally,"</p> <p>11 you don't mean that you disclosed the existence</p> <p>12 or terms of the agreement to any creditor.</p> <p>13 What you mean is that you told all of the</p> <p>14 creditors that you believed that the notes</p> <p>15 should be forgiven as part of compensation.</p> <p>16 Do I have that right?</p> <p>17 A. Well, that they would be forgiven as</p> <p>18 part of compensation.</p> <p>19 Q. Okay. Subject to that correction,</p> <p>20 are we on the same page now?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. Can we go to page 12,</p> <p>23 Interrogatory Number 2?</p> <p>24 A. This is still in Section 24?</p> <p>25 Q. Yes, sir.</p>
<p>Page 172</p> <p>1 JAMES DONDERO</p> <p>2 MS. DEITSCH-PEREZ: Object to the</p> <p>3 form.</p> <p>4 THE WITNESS: 24, I'm sorry.</p> <p>5 Page 2?</p> <p>6 BY MR. MORRIS:</p> <p>7 Q. Page 12.</p> <p>8 A. Page 12. Yes. Which one?</p> <p>9 Q. Number 2.</p> <p>10 A. All right.</p> <p>11 Q. You didn't identify any email</p> <p>12 correspondence in response to Interrogatory</p> <p>13 Number 2; is that correct?</p> <p>14 A. I don't have my e-mails. So we have</p> <p>15 painfully little from the Highland estate.</p> <p>16 Q. Okay.</p> <p>17 A. I think at the time we responded, we</p> <p>18 thought we might get access to things; but we</p> <p>19 haven't been able to come up with anything. We</p> <p>20 have – we have no access to anything.</p> <p>21 Q. Okay. So as you sit here today, you</p> <p>22 cannot identify any e-mail correspondence that</p> <p>23 discusses the existence of the agreement,</p> <p>24 correct?</p> <p>25 A. Not yet, no.</p>	<p>Page 173</p> <p>1 JAMES DONDERO</p> <p>2 (Whereupon, Exhibit 27, Defendant</p> <p>3 NexPoint Advisors, L.P.'s Objections and</p> <p>4 Responses to Plaintiff's Requests for</p> <p>5 Admission, Interrogatories, and Requests</p> <p>6 for Production, marked for identification,</p> <p>7 as of this date.)</p> <p>8 BY MR. MORRIS:</p> <p>9 Q. Let's go to Exhibit Number 27.</p> <p>10 A. Yes.</p> <p>11 Q. And if we can go to page 7.</p> <p>12 MR. MORRIS: I think – I don't know</p> <p>13 who's shuffling paper.</p> <p>14 BY MR. MORRIS:</p> <p>15 Q. But if we're at page 7, we're</p> <p>16 looking at Interrogatory Number 3.</p> <p>17 Is the reason for the denial – and</p> <p>18 I apologize. I may be going too quickly</p> <p>19 because I know we're all anxious to finish, but</p> <p>20 I do want to represent to you that we're</p> <p>21 looking at the discovery responses of NexPoint</p> <p>22 Advisors.</p> <p>23 A. Right.</p> <p>24 Q. And if we went to page 12, we'd find</p> <p>25 your signature on that one, okay? So looking</p>

<p>Page 174</p> <p>1 JAMES DONDERO</p> <p>2 at –</p> <p>3 A. Yes.</p> <p>4 Q. – Request for Admission Number 3,</p> <p>5 is your answer the same on behalf of NexPoint</p> <p>6 Advisors as it was for yourself as to why you</p> <p>7 denied Request for Admission Number 3?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. If we can go to Request for</p> <p>10 Admission Number 6, that is the same Request</p> <p>11 for Admission that we talked about with respect</p> <p>12 to yourself in your individual capacity a</p> <p>13 moment ago.</p> <p>14 Is your reason for denying Request</p> <p>15 for Admission Number 6 the same reason that you</p> <p>16 gave for yourself?</p> <p>17 A. Yes.</p> <p>18 Q. And looking at Request for</p> <p>19 Admissions Number 7 and 8, is the reason that</p> <p>20 you denied those Requests for Admissions</p> <p>21 because you told Seery and the committee and</p> <p>22 Clubock that you wouldn't pay anything for the</p> <p>23 notes because they were supposed to be forgiven</p> <p>24 as part of your compensation?</p> <p>25 A. And the independent board, yes.</p>	<p>Page 175</p> <p>1 JAMES DONDERO</p> <p>2 Q. Okay. Is there any other reason</p> <p>3 that you denied Request for Admissions Number 7</p> <p>4 and 8?</p> <p>5 A. Not that I can think of at this</p> <p>6 point in time.</p> <p>7 I don't think the LPA applies much</p> <p>8 here, but I may be –</p> <p>9 MR. MORRIS: All right. I have no</p> <p>10 further questions.</p> <p>11 THE WITNESS: Wonderful. Thank you.</p> <p>12 Have a good evening.</p> <p>13 MR. MORRIS: Thank you. Take care.</p> <p>14 MS. DEITSCH-PEREZ: Thank you.</p> <p>15 MR. MORRIS: Bye now.</p> <p>16 THE VIDEOGRAPHER: All right. If</p> <p>17 there are no further questions, this</p> <p>18 concludes today's deposition. Volume II</p> <p>19 [sic] consists of three media. We are off</p> <p>20 the record at 5:21 p.m.</p> <p>21 THE COURT REPORTER: Everybody is</p> <p>22 leaving, and I wanted to get everybody's</p> <p>23 order on the record.</p> <p>24 MS. DEITSCH-PEREZ: I'd like the</p> <p>25 rough. And then the regular can be</p>
<p>Page 176</p> <p>1 JAMES DONDERO</p> <p>2 whenever you get the regular done. No</p> <p>3 special rush.</p> <p>4 THE COURT REPORTER: Okay. Thank</p> <p>5 you.</p> <p>6 MS. DEITSCH-PEREZ: You're welcome.</p> <p>7 THE COURT REPORTER: Ms. Canty, I</p> <p>8 think there's a standing order for a daily</p> <p>9 delivery – or an immediate delivery for</p> <p>10 your firm?</p> <p>11 MS. CANTY: Yes.</p> <p>12 THE COURT REPORTER: Okay. I just</p> <p>13 wanted to confirm that. I'll get that out</p> <p>14 tonight, then.</p> <p>15 MS. CANTY: Okay, thank you.</p> <p>16 (The witness is excused.)</p> <p>17 (Deposition of James Dondero</p> <p>18 concluded at 5:21 p.m. CDT.)</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>Page 177</p> <p>1 C E R T I F I C A T E</p> <p>2</p> <p>3</p> <p>4 I, SUZANNE J. STOTZ, a Certified</p> <p>5 Shorthand Reporter, Registered Professional</p> <p>6 Reporter, Certified Realtime Reporter, and</p> <p>7 Notary Public in and for the State of Texas, do</p> <p>8 hereby certify that the foregoing is a true and</p> <p>9 accurate transcript of the stenographic</p> <p>10 above-captioned matter.</p> <p>11</p> <p>12</p> <p>13</p> <p>14 SUZANNE J. STOTZ, CSR, RPR, CRR</p> <p>15 Texas Certification No. 11942</p> <p>16</p> <p>17</p> <p>18 DATED: November 4, 2021</p> <p>19</p> <p>20</p> <p>21 NOTE: THE CERTIFICATE APPENDED TO THIS</p> <p>22 TRANSCRIPT DOES NOT APPLY TO ANY REPRODUCTION</p> <p>23 OF THE SAME BY ANY MEANS, UNLESS UNDER THE</p> <p>24 DIRECT CONTROL AND/OR DIRECTION OF THE</p> <p>25 CERTIFYING COURT REPORTER.</p>

1 ERRATA SHEET

2 I have read my testimony in the foregoing
3 transcript and believe it to be true and
4 correct to the best of my knowledge and belief
5 with the following changes:

6 PAGE LINE CHANGE

7 _____

8 _____

9 _____

10 _____

11 _____

12 _____

13 _____

14 _____

15 _____

16 _____

17 _____

18 _____

19 WITNESS SIGNATURE DATE

20

21 Sworn and subscribed to before me this

22 ____ day of _____, 2021.

23

24 Notary Public of the

25 State of _____.

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